DOCTOR OF PHILOSOPHY

Corporate governance developments in the Latin American Andean region

Mina, Maria Crisitna

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Maria Crisitna Mina

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Corporate Governance Developments in the Latin American Andean Region

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University of Dundee
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Declaration

I hereby declare that I am the author of this thesis; that the work of which this thesis is a record has been done by myself; and that it has not previously been accepted for a higher degree.

Signed: …………………………….. Date: …………………

Maria C. Mina

Certificate

We certify that Maria C. Mina has worked the equivalent of nine terms on this research, and that the conditions of the relevant ordinance and regulations have been fulfilled.

Signed: ………………….................... Date: ……………………

Prof. Christine V. Helliar

Signed: …………………………….. Date: …………………….

Dr. Elizabeth A. Monk

Dedication

In memory of my beloved
Mother

Table of Contents

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GLOSSARY

ACGC	Andean Corporate Governance Code
ACOPI	Colombian Association of Small Entrepreneurs – Associación Nacional de Pequeños Empresarios
ACP	African, Caribbean and Pacific
ADR	American Depositary Receipt
ANDE	National Association of Entrepreneurs – Asociación Nacional de Empresarios (Ecuador)
ANIF	National Association of Financial Institutions – Asotiation Nacional de Instituciones Financieras (Colombia)
AVE	Venezuelan Association of Executives – Asociación Venezolana de Ejecutivos
BBV	Bolivian Stock Exchange – Bolsa Boliviana de Valores
Bvc*	Caracas Stock Exchange – Bolsa de Valores de Caracas
BVC	Colombian Stock Exchange – Bolsa de Valores de Colombia
BVQ	Quito Stock exchange – Bolsa de Valores de Quito
CAF	Andean Development Corporation – Corporacion Andina de Fomento
CAGC	Andean Corporate Governance Code – Código andino de Gobierno Corporativo
CAINCO	Chamber of Commerce and Industry of Santa Cruz – Camara de Industria y Comercio (Bolivia)
CalPERS	California Public Employees' Retirement System
CAN	Andean Community of Nations – Comunidad Andina de Naciones
CARICOM	Caribbean Community
CARIFTA	Caribbean Free Trade Association
CEDCA	Business Centre for Conciliation and Arbitration – Centro de Conciliació y Arbitramento (Venezuela)
CEDICE	Centre for the Dissemination of Economic Knowledge (Venezuela)
CEO	Chief Executive Officer

CEF	Centre for Financial Stability - Centro Para La Estabilidad Financiera (Argentina)
CG	Corporate Governance
CNE	National Electoral Council – Consejo Nacional Electoral (Colombia)
CNV	National Securities Commission – Comisión Nacional de Valores (Venezuela)
CONASEV	National Supervisory Commission of Enterprises and Securities – Comisión Nacional Supervisora de Valores Del Peru
Confecámaras	Confederation of Chambers of Commerce – Colombia
CONINDUSTRIA	Venezuelan Federation of Industrialist and Businessmen – Confederación Venezolana de Industriales
COSO	Committee of Sponsoring Organisations of the Treadway Commission
CSR	Corporate Social Responsibility
CIPE	Centre for International Private Enterprise
CONAPRI	National Commission for the Promotion of Investment – Comision Nacional para la Pronición de Inversiones
DNP	National Department of Planning Departamento Nacional de Planeación (Colombia)
ECLAC	Economic Commission for Latin America and the Caribbean
ECOPETROL	Colombian State Oil Company - Empresa Colombiana de Petroleos
ELN	National liberation Army – Ejercito Nacional de Liberación
EMS	Small Medium enterprises
EPM	Medellin Public Enterprise – Empresas Publicas de Medellin
FARC	Revolutionary Armed Forces of Colombia – Fuerzas Armadas Revolucionarias de Colombia
FENADI	National Federation of Chambers of Small Manufacturers – Federación Nacional de Camaras para Pequeños Empresarios (Ecuador)
FRC	Financial Reporting Council
FSLN	Sandinista National Liberation Front – Frente Sandinista de Liberación Nacional (Nicaragua)

GDP	Gross Domestic Product
ICP	Institute of Political Science – Instituto de Ciencias Politicas
IBRD	International Bank of Reconstruction and Development
IDB	Inter-American Development Bank – Banco Interamericano de Desarrollo (BID)
ICESI	Colombian Institute of Post-graduate Studies (University) – Instituto Colombiano de Estudios Superiores
IEEP	Ecuadorian Institute of Political Economy – Instititute Ecuatoriano de Economia Politica
IFC	International Financial Corporation
INE	National Institute of Statistics – Instituto Nacional de Estadisticas (Bolivia, Venezuela)
INEI	National Institute of Statistics and Information – Instituto Nacional de Estadisticas e información (Peru)
IMF	International Monetary Fund
IoD	Institute of Directors
IPO	Initial Public Offering
ISA	Interconexion Electrica S.A.
LCAGC	Guidelines for an Andean Corporate Governance Code – Linimientos para un Código Andino de Gobierno Corporativo
LGS	General Companies Law – Ley General de Sociedades (Peru)
LMV	Securities Market Law – Ley del Mercado de Valores (Peru)
Mercosur	Southern Common Market – Mercado Común Del Sur (Latin America)
NAFTA	North American Free Trade Agreement
NYSE	New York Stock Exchange
OECD	Organisation for Economic Cooperation and Development
PDVSA	Venezuelan Oil – Petroleos de Venezuela
PEF	Private Equity Funds
Pemex	Petroleos de Mexico – Petroleum Mexico
PROCAPITALES	Peruvian Promoter of Capital Markets Development – Asociación de Empresas Promotoras del Mercado de Capitales
PIRC	Pensions Investment Research Consultants Limited (UK)
PyMES	Pequeñas y Medianas Empresas = SME

RDO	Regional Development Organisations
RNVI	National Registry of Savings – Registro Nacional de Valores e Intermediarios (Colombia)
SEC	Securities and Exchange Commission
SOE	State-Owned Enterprises
SOX	Sarbanes-Oxley Act
SPVS	Superintendence of Pensions, Securities and Insurance – Superintndencia de Pensiones, Valores y Seguros (Bolivia)
TIAA-CREF	Teachers Insurance and Annuity Association - College Retirement Equities Fund
UNDP	Executive Board of the United Nations Development Programme
UPC	Peruvian University of Applied Sciences – Universidad Peruana de Ciencias Aplicadas
WFE	World Federation of Exchanges

Abstract

Due to the globalisation trend, notable changes have pushed a distinctive interest in addressing corporate governance problems; either in emergent economies of Asia and Latin America Countries or in the transitional economies that spread over Eastern Europe. Further, a series of corporate scandals, in the US and Europe, has undermined confidence in both public company executives and the auditors. Formulating effective corporate governance measures is a complex task for legislators.

The purpose of this study is to determine whether corporate governance is seen from a broad stakeholder perspective in the Latin American Andean region (Bolivia, Colombia, Ecuador, Peru, and Venezuela) and also to provide an in depth analysis and comparison of the reasons organisations in the region want to implement corporate governance principles, whether it is because their want to be accountable to their stakeholders or because they want to show their legitimacy. The non-binding OECD 2004 principles of corporate governance in conjunction with the CAF (Andean Development Corporation) will be utilised in the study as an international benchmark.

The study has generated significant information about the corporate governance challenges facing listed companies trading in the Latin America's Andean region. It is hoped that the research results will serve as an aid to better focusing the future policy dialogue in the region. It is anticipated in this sense they will facilitate upcoming analysis and debate.

List of Tables

List of Figures

Appendices

CHAPTER ONE

Introduction

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Introduction

Introduction of the research topic

Corporate governance deals with organisations and decision-making structures. One of the main objectives is to ensure the efficient convergence of competing interests that are affected by company activities. The debate about shareholder interests and other stakeholder interests is not recent and the balance between the different groups of stakeholders is essential to the long-term viability of organisations. Corporate governance is about the reconciliation of otherwise diverging interests. Governance analysis must serve as a means to organise, structure and establish an efficient prioritisation of interests. This study brings together elements from the corporate governance literature to develop and enhance a stakeholder-accountability-legitimacy approach. In doing so, the study explains the accountability of organisations to multiple stakeholders with differential power, emphasising the importance of structures and processes, and the culture or ethos of boards in which multiple stakeholders may have compatible rather than competing interests. This thesis continues the effort to achieve a better understanding of global corporate governance (CG) structures and mechanisms by looking at the specific emerging economies of the Latin American Andean Region (Bolivia, Colombia, Ecuador, Peru and Venezuela). This region is characterised by: underdeveloped financial markets; weak legal system; relatively poor law enforcement; and high ownership concentration. The extant literature shows that there are significant differences among corporate governance mechanisms around the world and that enhancing corporate governance remains very much a local effort. Country specific circumstances and institutional features mean that global findings do not necessarily apply directly to every country or situation. Local data needs to be used to make a convincing case for change. Local capacity is needed to identify the relevant issues and make use of political opportunities for legal and regulatory reform. Corporate governance thus depends on local capacity in terms of data, people, and other resources.

This study focuses on stakeholders' perceptions of corporate governance. Especially stakeholders, such as shareholders, managers and other employees, customers, suppliers, the government and the community; in general all those who are key respondents concerning CG implementation. In order to capture the stakeholders' experience the interpretive approach identified by Burrell and Morgan (1979) is employed in conjunction with phenomenology as a paradigm and methodology. Epistemological principles of this approach are investigated in relation to the broader interpretive paradigm and its context. The research design incorporates the use of: (i) semi-structured interviews with Colombian stakeholders; and (ii) a case study of the organisation that is the major promoter of corporate governance principles in the Andean Region: CAF.

Throughout the Andean region democracy is under challenge from a wide variety of sources – for many different reasons. In Venezuela President Chavez is leaning to the left and is nationalising industries, which may reduce the need for corporate governance. President Chavez, with the oil money from Venezuela, is also buying political influence in other Andean countries such as Ecuador and Bolivia. At the time of this study Colombian president was Alvaro Uribe a right wing and the friendliest leader in the region towards the US. Corporate governance in Colombia may thus be different from Venezuela and other Latin American countries. This gives an interesting context within which to examine corporate governance.

Several authors argue that the diversities of countries have a bearing not only on how corporate governance standards can be developed, but also on the impact of reforms on the overall link between investors and the development of the economy. Chong and Lopez-de-Silanes (2007), Cheung and Chan (2004), Cleassens and Fan (2002), Coffee (1999, 2001), Pistor and Wellons (1999), Shleifer and Vishny (1997), and Pistor 2001 suggest that, since Asia, Latin America or Eastern and Central Europe constitute diverse regions in terms of legal tradition, regulatory infrastructure, and economic development, credit must be given to this diversity and acknowledge that different jurisdictions may adopt different approaches based on their national circumstances. These national traits may determine how corporate governance should be fulfilled.

This research examines the extent to which corporate governance developments in the region are influenced by the Andean Development Corporation's (Corpotacion Andina de

Fomento – CAF) corporate governance guidelines. Special attention is given to the reason why companies decide to adopt corporate governance principles, if at all, and whether it is because they are required to be accountable to their stakeholders or want to legitimise their operations. The study also looks to whether there is a wide stakeholder approach in the Andean region. An analysis of the structures in place to facilitate good practices is also carried out, highlighting the strengths and weakness of current corporate governance frameworks.

The first set of data was gathered from semi-structured interviews with 21 Colombian stakeholders including corporate managers, auditors, regulators, non-executive directors and users of corporate documents. This enabled the researcher to get an understanding of the way that Latin American companies are dealing with issues in relation to the application of corporate governance principles.

The second stage was a case study of CAF that focuses on CAF's headquarters in Caracas (Venezuela) and the regional office in Bogotá (Colombia). As part of the case study, documents are gathered and analysed including: the annual reports of 15 companies which adopted corporate governance principles as part of a pilot study undertaken by CAF; minutes of meetings within CAF; and other official reports. Interviews with CAF staff were undertaken in Caracas and Bogotá to understand the difficulties in changing corporate practices. Attendance at CAF meetings and seminars were also carried out in Bogotá, Quito and Guayaquil.

This research examines corporate governance policies and laws in the Andean Region of Latin-America. It covers issues of board structure and compliance, and whether companies in the Andean Region implement Andean Development Corporation's (CAF) corporate governance principles as a means of accountability to stakeholders or to legitimise their activities.

1.1 Justification of the study

The extant literature shows that notable changes have pushed for a distinctive interest in addressing corporate governance problems in the emergent economies of Asia and Latin

America and in the transitional economies of Eastern Europe. Further, corporate scandals around the world have undermined confidence in public companies.

Motivations for studying developments in the implementation of corporate governance principles in the Andean region arose not only from recent local trends but also from the researchers' conviction that rigorous academic studies can have a direct and substantial positive social impact and that lessons can be learned from different countries' experiences which can be used for improving public policy design.

The research contributes to knowledge as it adds to an understanding of current corporate governance practices in Latin America and provides suggestions to improve the policy framework that supports corporate governance in the Andean Region. Good corporate governance in a thriving democratic society with a prevalent culture that supports economic growth may be a shield against widespread global financial crises.

The results may assist policymakers in the region as they develop market mechanisms in both the corporate and financial sectors. Moreover, the study provides feedback from stakeholders, regulators, company managers, independent directors, auditors and users of company information, about corporate governance in the region as well as generating empirical evidence of developments of corporate governance in the region that will be of concern to many investors.

This study is particularly important because it is, to the researcher's knowledge, the first investigation of the implementation of corporate governance in the five Andean countries. To date no attempt has been made to evaluate the perceptions and opinions of these stakeholders about the reasons and expectations of companies from the implementation of such practices. This research also provides a rich description of the status of corporate governance practices in each of the five Andean countries and expands the limited literature of the whole region by applying theoretical and methodological perspectives through which the dynamics created by the interrelationship between political, social, and economic factors can be understood and evaluated. It is hoped that various stakeholders will use the results of the study to further their knowledge of corporate governance.

This area is worthy of research due to the growing interest in this issue, and the amount of national and international resources channelled by different organisations interested in the social development and economic sustainability of the region. In addition the increased importance given to transparency and accountability for making company managers discharge their responsibilities to stakeholders, with rights to demand disclosure of relevant information also attracted the attention of the researcher to the topic.

The findings can be used as a foundation for developing improvements in corporate governance in the Andean region as the concluding chapter summarises the key issues that might be useful for regulatory authorities in the region. Moreover, the results from the empirical research, although limited to the corporate governance context of the Andean region, might have wider implications on a worldwide basis. It is hoped that this study can enrich an understanding of the regulatory divide and the actions of those who implement these principles.

1.2 Research questions

This study focuses on stakeholder perceptions and CAF's activities in promoting the implementation of corporate governance principles in the Andean Region, by explaining the features that underlie corporate governance practices and the legal framework in the Andean region. In particular, the research looks at the issue of effective independent boards; internal control systems; risk management; the integrity of financial reporting; transparency; and the disclosure of relevant information all focused on a stakeholder, accountability and legitimacy perspective. The study asks the following research questions:

1. Is corporate governance viewed from a broad stakeholder perspective?

2. To what extent do companies in the Latin American Andean Region implement corporate governance principles to enhance their accountability to stakeholders?

3. To what extent does the implementation of corporate governance by organisations in the Latin American Andean region reflect a need to legitimise their activities to stakeholders?

1.3 Research objectives

Answering the research questions may achieve the following aims and objectives:

- To identify the efforts of the Andean Development Corporation (CAF) in promoting the implementation of corporate governance standards by companies throughout the Andean Region;

- To identify what is being done by organizations apart from CAF to improve corporate governance standards in each Andean country;

- To identify patterns of compliance with corporate governance rules among Andean companies;

- To identify the reasons why Andean companies decide to implement corporate governance principles in their organisations; and

- To compare and contrast the implementation of corporate governance principles in the five Andean countries.

From the available information it has been possible to identify the characteristics that are particularly powerful motivators in encouraging the adoption of corporate governance standards.

1.4 Structure of the research

The thesis is organised around a series of substantive chapters through which run a number of recurrent themes. Together these concepts provide the thread which binds together the whole thesis.

Following the introductory chapter, Chapter two is an introduction of the Latin America Andean Region; this chapter presents elements of the corporate governance framework in Latin America, in particular those relating to the Andean region. Additionally, the chapter provides background on: Latin history; culture; politics; and economic development of the region.

Chapter three examines the literature on corporate governance including studies on emerging markets in general, and those of Latin America. The chapter also includes a review of the small number of studies on countries in the Andean region. Although these studies have a number of limitations, their descriptions help to outline the current knowledge about corporate governance in the Andean region and provide a platform upon which the current thesis is built.

Chapter four presents the theoretical framework within which the research topic is examined; the theoretical framework provides the structure for carrying out the inquiry proposed in this thesis. The chapter includes a detailed explanation of the research theories chosen, together with explanations about the reliability and validity of the possible research results, although the limitations faced throughout the research process are documented.

Chapter five describes the research methodology and delineates the ontological and epistemological assumptions supporting this study. The current study uses an interpretive research paradigm where nominalist ontology is assumed, an anti-positivistic epistemology is employed, a voluntaristic view of human nature is adopted, and an ideographic methodology is used. In accordance with this research design, the thesis adopts a qualitative approach to collect and analyse data.

In addition, chapter five also presents a description of the method of data collection with particular emphasis on the activities undertaken by CAF in the promotion of the implementation of corporate governance principles by organisations in the Andean Region. The qualitative methods adopted for this study are semi-structured interviews and a case study. The combination of these two methods is used to address the research questions that form the basis of the thesis. Such a mix is desirable so that the limitations of one approach are compensated by the strength of the other. In addition, the mix of methods facilitates a richer examination of the research objectives being considered. The chapter also includes the justification for the methodological approach chosen for this thesis to avoid confusion when they are analysed.

Chapter six documents the results of interviews conducted with twenty-one stakeholders occupying various managerial, regulatory, academic, and professional positions in

Colombia between September and November 2008. The interviewees were asked about their views on the development of corporate governance standards in the country and the region.

Chapter seven presents an analysis of the findings of the case study, focusing on the attitude of company owners, managers, directors, government officials, regulators and other stakeholders towards the implementation of corporate governance standards in different organisations. This chapter drafts patterns of compliance, and, reviews changes due to CAF's promotion of good corporate governance practices in the region. The findings in chapter six and seven are interpreted in the light of stakeholder theory, accountability and legitimacy.

Finally, chapter eight provides an overall summary of this work and presents some emerging conclusions and recommendations from the research; discusses the limitations of the study and explains why these limitations were not addressed in the thesis. Additionally, the chapter suggests some avenues for future research and ends with some concluding comments.

1.5 Summary

This chapter provides an introduction to this thesis to shed some light on the focus of the research and why it is important. In addition, the chapter guides the reader on the structure and content of the thesis, and provides a sign post to the direction of the research.

The decision about the doctoral research topic was derived from the background of the student. The topic was chosen after the interest developed during a master degree undertaken at the University of Dundee. This interest was heightened by the fact that corporate governance research in the Andean region is limited. In addition, the growing interest in corporate governance issues throughout the Andean region facilitated access to relevant data for the study. As a result, it is believed that the current study makes a valuable contribution to an area which is of immense growing importance.

CHAPTER TWO

Latin American context and corporate governance in the Andean Region

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Introduction

The structure of corporate governance in any country is determined by a wide arrangement of domestic factors, including the corporate ownership structure, the state of the economy, the legal system, government policies, culture and history. There are also a large number of external issues, such as the global economic climate, cross-border institutional investment and the extent of capital inflows from abroad.

The basic principles of corporate governance of fairness, transparency, accountability and responsibility (OECD, 2004) are relevant all over the world. Promoting corporate governance can be especially beneficial to emerging market companies and countries. By adopting principles of corporate governance, companies in developing countries can often command higher valuations, improve their profitability, and gain better access to outside capital than their inefficiently governed peers. At the same time developing countries can attract more interest from local and foreign investors and reduce their vulnerability to financial crises (Mueller, 2006).

However, applying corporate governance standards is not always easy because of various legal, economic and social systems. Nevertheless, many countries and companies are taking positive steps towards corporate governance reform, especially as they see how improving standards can help them (Aguilera and Jackson, 2003).

This section attempts to sketch the corporate governance developments in Latin America and to interpret those developments in the light of some of the common characteristics shared by most of the countries in the region. The section introduces a brief overview of the Latin American context. It comments briefly on some of the characteristics shared by countries in the region including culture and history, poverty and social inequality, political unrest, economic instability and ownership concentration. Finally a summary of the chapter is included.

2.1 Common characteristics among some Latin American Countries

Latin America is a diverse region with variations in political and economic systems. However, the countries of Latin America are also considered as an entity with common characteristics, on matters such as culture, historic, political and social structures, law enforcement, economic development and growth, Sharpe and Simoes (1996) comment that:

> "Just as cultures differ widely throughout North America due to variations in historical development, the same holds from country to country in Latin America, and from region to region within countries" (p. 274).

However, the countries of Latin America share the same colonial (Spanish/Portuguese) heritage, and thus there are several similarities in their government systems and economic policies. This section explores these general similarities that make Latin America distinct from other regions of the world, and includes a brief description of those common Latin American characteristics which usually affect how individuals conduct themselves and which also influence decision-making processes.

2.1.1 Cultural and Historical Settings

From a cultural perspective, Latin America generally includes those parts of the Americas where the Spanish or Portuguese languages are spoken, including Mexico, most of Central America and South America, and parts of the Caribbean such as Haiti (a non-Hispanic country with French and some Hispanic cultural influence).

The need to take culture into account in any corporate governance analysis is widely acknowledged. It is argued that the legal approach to corporate governance is enriched by including evidence about the cultural foundations that underline legal rules of corporate governance (Roe, 2001). Large institutional investors find it necessary to adopt culture-sensitive corporate governance principles for the foreign markets in which they invest (CalPERS, 2003). The largest international economic organisations have adopted principles for good corporate governance as part of a wider agenda on corporate governance reform, especially for transition economies and developing countries[1] (Licht *et al.*, 2001). These principles and other policy statements invariably note the need to adapt to the economic, social, legal and cultural circumstances of particular countries (OECD, 1999). Academic writers constantly mention culture as one of the factors that may stimulate or worsen the persistence of existing corporate governance systems (Bebchuck and Roe, 1999, 2004; Gilson, 1996; Gourevitch, 2003). Thus, a brief review of Latin America's cultural profile and some of its most noticeable social particulars are included in this study.

Figure 2.1 - Latin American Geographical Regions

Latin American geographical regions: source Wikipedia

The twenty nations of Latin America can be grouped into six sub-regional groups (Mexico, Central America, the Caribbean, the Andean region, Brazil, and the South Cone), based on geography, shared history and cultural affinity, racial make-up and levels

[1] These organizations include the Organisation for Economic Cooperation and Development (OECD), the World Bank, the Inter-American Development Bank (BID), and the International Monetary Fund (IMF)

of development (see Figure 2.1) and there is some overlap among these sub regions: for example between Mexico and Central America. Also Venezuela, Panama, and Chile combine aspects of three sub regions, while Costa Rica and Paraguay are each rather distinctive in their own right. To understand the context of this thesis it is helpful to summarise the 6 regions of Latin America. First Mexico will be discussed; then Central America, which includes: Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica and Panama; then the Caribbean Spanish speaking countries: Cuba and Dominican Republic, and the French speaking Haiti; the especial attention is giving to the countries in the Andean region: Bolivia, Colombia, Ecuador, Peru and Venezuela as this thesis is focus on corporate governance developments in this region; finally the two remaining Latin American regions are introduce, Brazil and Paraguay and the South Cone integrated by Argentina, Chile and Uruguay. In order to better understand cultural differences an similarities through Latin America an outline of the characteristics of each of the six sub regions is introduced.

1) *Mexico*

Mexico is Latin America's second largest country by population and was third largest in size up to the Mexican-American War of 1846 – 1848 when it lost Texas, California and New Mexico to the US. Its history over the course of the last century has been profoundly influenced by the Mexican Revolution (1910 – 1920), the Twentieth century's first social revolution (Bonfil, 1996). This led to the emergence of a one-party state under the control of the Institutional Revolutionary Party (PRI [2]) which ran the country for 71 years until it lost power to the opposition candidate, Vicente Fox, of the right wing National Action Party (PAN) in the 2000 presidential elections (Schedler, 2004). Under the PRI, and with active state involvement in the economy, Mexico was transformed from a backward producer of primary raw materials such as minerals, coffee, henequen[3], rubber, and cotton to one of Latin America's leading industrial powers (Meyer *et. al.* 2002). As part of this

[2] In 1929, the National Mexican Party (PNM) was formed by the serving president, General Plutarco Elías Calles. (It would later become the Partido Revolucionario Instucional (PRI) that ruled the country for the rest of the 20th century.) The PRI is typically referred to as the three-legged stool, in reference to Mexican workers, peasants and bureaucrats.

[3] Henequen, plant of the family agave and its fibre, third in importance among the leaf fibre; the henequen plant is native to Mexico, where it has been a source of textile fibre since pre-Columbian times. Other varieties of agave are used to make tequila. Henequen was introduced to Cuba in the 19th century, becoming the country's chief fibre crop by the 1920s. The fibre is sometimes referred to as Yucatan, or Cuban, sisal.

development strategy, the Mexican identity was promoted drawing on Aztec themes from the country's pre-colonial past while privileging the mixed-blood *mestizos* over the 10 percent indigenous population who are legally and economically marginalised (Meyer *et. al*., 2002). The rights of the indigenous people have been actively promoted by Zapatista guerrilla group (Lopez and Lopez, 2001).

As a major oil exporter and therefore benefiting from international prices rises in the 1970s, Mexico enjoyed a guaranteed source of income. However 1982 saw the beginning of the international debt crisis when the country announced it could not meet the payments to service its huge foreign debt. Since then Mexico has liberalised its economy and its interests are more in line with those of its northern neighbour, the US, after signing the North American Free Trade Agreement (NAFTA) with the United States and Canada which came into force in 1994 (Gweynne *et. al.* 2003).

2) *Central America*

Some of the countries in the Central America region (Guatemala, El Salvador, Honduras, and Nicaragua) bear significant residual influence from the Mayan Indian civilization, which began to decline in the centuries before Columbus arrived in 1492. For the first two decades after independence from Spain (1821-1839), there was a unified Central American Confederation, until it broke apart into five countries. The countries in this region, with the exception of Costa Rica, have had a history of political repression and of economic marginalisation of the population as the region's leaders promoted export-led agriculture and seized the more productive land from small peasant farmers (Brockett, 1998). By contrast, in Costa Rica, due to its small population in colonial times and the absence of an indigenous people[4] who could be taken advantage of a more classless system of family farming was developed; this allowed Costa Rica to reach higher levels of development in the late twentieth century (Barraclough, 1973, Rueda-Junquera, 1998). In Guatemala, the largest state in Central America, the majority of the population belong to *Quiche* indigenous groups. These groups were subjected to suppression through the 30-year-long genocide war from the 1960s to the 1990s as, in their counter-insurgency

[4] Costa Rica is largely European in its racial make-up

strategy against guerrilla groups; the military targeted the indigenous population (Sarmineto, 1993).

The Panama Canal has dominated the history of Panama and was the cause of its declaration of independence from Colombia in 1903 (Slater, 1984). The United States actively promoted Panama's independence; the US maintained control over a 10-mile-wide canal zone until 2000.

3) *The Caribbean*[5]

The region is located southeast of North America, east of Central America, and to the north and west of South America. The island nations of the Caribbean exemplify a great variety of cultural influences, reflecting the four European nations that colonized them: Spain, France, Britain, and the Netherlands. The islands are divided by language[6], by geography, by politics[7] and by colonial history and only in the 1990s did the region's countries begin to find common cause (Richardson, 1992). This was where Columbus first landed in 1492 and where Europeans first established settlements (Maingot, 1984). Most of the region's countries only achieved independence in the 1960s and continued to maintain close economic ties with their former colonial rulers (Black, 1984). Thus, the English-speaking Caribbean countries form part of the ACP (African, Caribbean and Pacific) countries that benefited from the Lomé Convention, a series of developments with the European Union from 1975 to 2000, which was succeeded by the Cotonou Agreement in 2000, due to last for 20 years. Additionally, in 1972, commonwealth Caribbean leaders at the seventh heads of Government Conference transformed the Caribbean Free Trade Association (CARIFTA) into the Caribbean Community (CARICOM) of which a common market is an integral part (Maingot, 1984). Another economic oriented strategy that Caribbean political leaders are pursuing is the offer of

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[5] The Caribbean isles (also called Antilles) are an island chain 2,500 miles (4,020 km) long and no more than 160 miles (257 km) wide at any given point. They enclose the Caribbean Sea. Such islands include Aruba, Bahamas, Barbados, Bonaire, the Cayman Islands, Antigua, Cuba, the Virgin Islands, Dominica, Hispaniola, Jamaica, Montserrat, Puerto Rico, Saba, Saint Kitts, Saint Lucia, Saint Vincent and the Grenadines and Trinidad and Tobago. At one time, there was a short-lived country called the Federation of the West Indies composed of ten English-speaking Caribbean territories.

[6] There are Spanish, English, French and Dutch-speaking countries

[7] The Caribbean is integrated by 17 independent states, British colonies, French and Dutch dependencies and Puerto Rico a 'commonwealth' of the United States

investment incentives in offshore finance, with the aim to capture highly mobile international finance capital.

Cuba, the Caribbean's largest country has suffered isolation since its socialist revolution in 1959. The country's economy depends on the export of a few basic commodities such as sugar, bananas, and bauxite-alumina; however in the last decade Cuba has also developed a policy that offers incentives to foreign investors by allowing a level of foreign ownership in Cuba's companies, promoting tourism, reorienting state investment to enhance product development for global markets, and transforming large state farms into autonomous and efficient cooperatives (Brooks, 2007; Leo Grande and Thomas, 2002).

4) *The Andean Region*

Geographically, the Andean region is united by the mountainous terrain plus the cultural legacy of the Inca Empire. The region stretches from Venezuela on the Caribbean coast, through Colombia, Ecuador, and Peru to Bolivia[8]. Most of these countries were liberated by Simon Bolivar[9], who dreamed of creating a vast confederation of Spanish-speaking countries (Ray, 1984; Fowler, 2002, CIA, 2009). This grouping is also very racially diverse – to the north the racial mix is more European, whereas the population of Bolivia, Ecuador and Peru, which formed the heart-land of the Inca empire, are largely *mestizo* and in Bolivia, the population is mainly indigenous Quiche and Aymara (Garcia, 1984).

Colombia is the 26th largest nation in the world and the fourth-largest country in South America (after Brazil, Argentina, and Peru) with an area more than twice the size of France. In Latin America, it is also the country with the third largest population after Brazil and Mexico (CIA, 2008). Colombia has one of the largest Spanish-speaking populations of the world, and is also one of the largest manufacturers and one of the most ethnically diverse countries in South America (Davis *et al*., 1998).

[8] Bolivia is the poorest country in Latin America

[9] Simon Bolivar (1783 – 1830) was one of the South America's greatest generals. Bolivar was born in July 24, 1783, at Caracas, Venezuela. His victories over the Spaniards won independence for Bolivia, Colombia, Ecuador, Peru, and Venezuela. He is Called *El Libertador* (The Liberator). Bolivar was Upper-class Creole (Criollo).

Little is known about the various Indian tribes who inhabited Colombia before the Spanish arrived. However, it is believed that prior to the Spanish conquest, Colombia was inhabited by Chibcha, sub-Andean, and Caribbean people, all of whom lived in organized, agriculturally based communities (Stavenhagen, 1997). In 1510 Spaniards founded Darien, the first permanent European settlement on the American mainland. In 1717 they established the Viceroyalty[10] of New Granada, which was terminated in 1819 when the patriotic army gained independence from Spain. The term “New Granada” continued to be used in conservative circles especially among ecclesiastics. Today some refer to Colombians as *Newgranadinos* (New Grenadians) (Fowler, 2002).

After a 14-year struggle, during which time Simón Bolívar’s Venezuelan troops won the battle of Boyacá in Colombia on Aug. 7, 1819, independence was attained in 1824. Bolívar united Colombia, Venezuela, Panama, and Ecuador in the Republic of Greater Colombia (1819–1830), but in 1931 he lost Venezuela and Ecuador to separatists. Two political parties dominated the region: the Conservatives who believed in a strong central government and a powerful church; and the Liberals who believed in a decentralised government, strong regional power, and a less influential role for the church. Bolívar was himself a Conservative, while his vice president, Francisco de Paula Santander, was the founder of the Liberal Party (Fowler, 2002; Lynch, 2006).

Colombia currently suffers from a political-military conflict involving rebel guerrilla groups, paramilitary militia, drug trafficking and corruption inside minor towns and some cities. The conflict originated around 1964 – 1966, when the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN) were founded and began their guerrilla insurgency campaigns against successive Colombian government administrations (Ruiz, 2001; Black, 1984).

According to the Guardian (8th June, 2007), record economic growth and a new period of relative security seem to be changing perceptions of Colombia around the world – Colombia is increasingly being seen as a place to invest and even to enjoy a holiday. The publication also mentions that economic growth and Colombia’s business-friendly environment have proved an attraction for foreign investors in recent years as investment

[10] A district or province governed by a viceroy.

has been flowing into the energy, mining, financial and retail sectors. As with the majority of Latin American countries, Colombia has a secretive business culture; this diminishes the level of disclosure about companies' financial circumstances, managerial disagreements and corporate governance developments (Bernal, 2006).

Venezuela benefited from the oil boom of the early 1970s. In 1974, President Carlos Andrés Pérez took office, and in 1976 Venezuela nationalized foreign-owned oil and steel companies, offering compensation. However declining world oil prices sent Venezuela's economy into a tailspin, increasing the country's foreign debt (Salazar-Carrillo and Cruz, 1994; Giusti, 1999). Pérez was reelected to a non-consecutive term in 1988 and launched an unpopular austerity program. Military officers staged two unsuccessful coup attempts in 1992, while the following year Congress impeached Pérez on corruption charges. President Rafael Caldera was elected in Dec. 1993 to face the 1994 collapse of half of the country's banking sector, falling oil prices, foreign debt repayment, and inflation. In 1997, the government announced an expansion of gold and diamond mining to reduce reliance on oil (Tarver and Frederick, 2006; Salazar-Carrillo and Cruz, 1994; Giusti, 1999).

Although, Colombia and Venezuela have maintained formal democratic systems since the 1950s, by the 1990s they had become unable to channel the growing social discontent in both countries. This has led to populism in Venezuela under Hugo Chavez that has marginalised the country's traditional parties, and seen growing social conflict in Colombia between guerrillas, the military and right-wing paramilitary squads, with the United States becoming increasingly involved[11] (Silva, 2004). Ecuador, Peru and Bolivia have each experienced periods of dictatorship in the 1960s and 1970s; nevertheless they were socially progressive. In Colombia, economic development was more carefully managed and the country avoided the effects of the international debt crisis in the 1980s; however the production and trading of illegal substances has led to problems of corruption and violence that are undermining social and political stability (Silva, 2004). Peru and Bolivia have problems maintaining sustainable economic growth and social development. Bolivia was hit by the collapse of the tin market in 1986 on which its

[11] By 2006, the United States had invested $4 billion into 'Plan Colombia', the joint U.S.-Colombia coca antinarcotics program begun in 2000.

economy had long depended (Thorburn, 1994). Ecuador has experienced a period of continuous crisis, overthrowing two heads of state under popular pressure in 1996 and 2000 and adopting the US dollar as its currency in January 2000 in an attempt to stabilise its financial system (Silva, 2004).

5) *Brazil (and Paraguay)*

Brazil is nearly as big as the United States in terms of land area, and is by far the most populous country in Latin America, so size alone qualifies it as a separate region. The fact that it is the only Portuguese- speaking country in the Western Hemisphere makes it stand out even more. The country has a vibrant, fun-loving culture, with more relaxed social norms than in Spanish America, where the Catholic Church tends to have a stronger influence (Conniff, 1984).

At the end of the twentieth century Brazil was Latin America's dominant economic and political power, transformed from a largely traditional coffee-producing country at the beginning of the century to a major world industrial power at its end (Wright, 2003). However, the benefits of economic development remain unequally divided (Thorp, 1998,). The most prosperous parts of the country are in the south while the poorest parts are in the north-east. Brazil also displays a wide racial mix in its population, a combination of immigrants from Europe and Asia, the descendants of the African slaves brought in great numbers during Colonial times, and the small indigenous population, largely tribal groups living in the vast interior of the country (Thorp, 1998).

Paraguay can be placed with Brazil as its recent economic past has been influenced by Brazilian immigration along the country' borders although Paraguay has remained cut off from is neighbours. After independence in 1813, Paraguay followed a policy of isolation and self-sufficiency under its early leaders[12], an apparently successful experiment but was ended by the War of Triple Alliance against Brazil, Argentina and Uruguay, from 1865 to

[12] Paraguay under José Gaspar Rodríguez de Francia (1813 – 1840) and Carlos Antonio López (1841- 1862) developed quite differently from other South American countries, the aim of Rodríguez de Francia and Carlos López was to encourage self-sufficient economic development in Paraguay by imposing isolation from neighbouring countries. The regime of the López family was characterised by strong centralism without room for the creation of a true civil society. There was no distinction between the public and the private enterprise, and the López Family ruled the country as it would a large property estate. The government controlled exports and was extremely protectionist, never accepting loans from the outside and, through high tariffs, refusing the entrance of foreign products.

1870 in which Paraguay suffered extensive territorial losses to Brazil and Argentina; also the Paraguayan population was devastated through war and disease – as many as 1.2 million people, or 90 percent of its pre-war population was lost (Fowler, 2002; Farwell, 2001 and Abente, 1984) . Paraguay has a market economy marked by a large informal sector[13] that features both exporting imported consumer goods to neighbouring countries, and thousands of small business enterprises. Paraguay's largest economic activity is based on agriculture, agribusiness and cattle ranching (Skidmore, and Smith 2005; Spoor, 2000). Paraguay is ranked as the world's third largest soybeans' exporter (CIA, 2008). Despite difficulties arising from political instability, corruption and slow structural reforms, Paraguay has been a member of the trade bloc *Mercosur*[14], participating since 1991 as one of the founding members (Roett, 1999).

6) *The Southern Cone*

Chile, Argentina and Uruguay make up the Southern Cone, so-called because of the geographical shape of these countries. In terms of both ethnicity and dialect, this southernmost part of Latin America lives up to its claim to be the "most European" part of the region, as most of the indigenous population from Argentina and Uruguay was eliminated after independence (Stavenhagen, 1997). A large proportion of the population in Argentina and Uruguay are of Italian descent, while Germans and Basques make up a substantial portion of the Chilean population. Paradoxically, despite the economic advantages and relative lack of ethnic friction, the Southern Cone has not lived up to its promise (Thorp, 1998) as some of the fiercest fighting anywhere in Latin America took place in Chile and Argentina during the "Dirty War" of the 1970s and 1980s (Fowler, 2002).

Argentina, Chile and Uruguay are well-off in their combination of geography and climate and, by the early twentieth century, Argentina and Uruguay showed indices of social development better than many developed countries (Bulmer-Thomas, 1994). Under president José Battle y Ordoñez (1903 – 1907; 1911 – 1915) Uruguay became the world's

[13] Informal economic activity is a dynamic process which includes many aspects of economic and social theory including exchange, regulation, and enforcement. By its nature, it is necessarily difficult to observe study, define, and measure.
[14] Mercosur (Spanish: Mercado Común del Sur) Southern Common Market, which is a Regional Trade Agreement among Brazil, Argentina, Uruguay and Paraguay founded in 1991.

first welfare state. Argentina became a significant industrial power and the incorporation of its working class owed a lot to the distributive measures of the governments of Juan Domingo Perón (1946 – 1955; 1973 – 1974), who is regarded by many as being responsible for the unstable political life of the country since (Fowler, 2002). While Chile and Uruguay were democracies for much of the twentieth century, Argentina was beset by constant military intervention in politics from 1930 to the mid 1980s. All three countries had military dictatorships – Chile and Uruguay from 1973, Argentina from 1976 – that sought to eliminate the left and to consolidate the elite rule (Thorp, 1998; Ward, 1997; World Bank, 2000; Silva, 2004.) overall there is a wide cultural diversity amongst the regions which gives a flavour to the challenges of corporate governance in the region.

2.1.2 Social Factors

Inequality and poverty are some of the region's main challenges; according to the Economic Commission for Latin America and the Caribbean (ECLAC) Latin America is the most unequal region in the world (ECLAC, 2005, 2007). Moreover, according to the World Bank (2004), nearly 25% of the population lives on less than 2 USD a day. The countries with the highest inequality in the region as measured with the Gini index in the UN Development Report in 2006 were Bolivia (60.1%), Haiti (59.2%), Colombia (58.6%), Brazil (58%) and Chile (57.1%) while the countries with the lowest inequality in the region were Nicaragua (43.1%), Ecuador (43.7%), Venezuela (44.1%), and Uruguay (44.9%). Notably two of the five Andean countries are at the top (Bolivia and Colombia) and two at the low end (Ecuador and Venezuela). One aspect of inequality and poverty in Latin America is the unequal access to basic infrastructure. For example access to water and sanitation and the quality of these services remains low (Dean, B. 2003; CNMV, 2006; World Bank, 2007).

In conjunction with the rise of democracy during the early 1980s, the region turned towards structural adjustment reforms in the hope of promoting economic growth and reducing its high levels of inequality and poverty. The emergence of a neo-liberal conviction implemented under the Washington Consensus[15] supported a systematic programme of decreasing state involvement in the economy through trade liberalisation, privatisation and reduced public spending in the hope of promoting economic growth through the renewal of foreign investment flows to the region (Williamson, 2006). Due to Latin America's high diversity, however, these neo-liberal reforms have had mixed results of successes and failures with some economic policies actually contributing to the already high levels of inequality and poverty within the region.

However, some of these problems existed long before neo-liberal reforms were introduced; nevertheless, the implementation of neo-liberal reforms appears to have aggravated them (Onis and Senses, 2005). Not only has growth been relatively low and highly unstable, but the degree of inequality appears to have increased during the era of neo-liberal restructuring. These issues are important, not only for equity and socio/political reasons, as growing inequality can lead to social and political tensions and in the long run the reversal of reforms, but also because increases in income inequality and poverty can be associated with low growth (Perry *et. al*., 2005).

According to the World Bank (2004) study of 26 countries, five of them in Latin America, the main problem for the poor are unemployment, and a link exists between the lack of work, violence, drug use and alcoholism. Poor people in general do not trust politicians, believe governments are corrupt, and see the Roman Catholic Church as the most effective institution in dealing with their problems. These social factors all have a bearing in the corporate governance developments in the region.

2.1.3 Political Factors

Change and uncertainty have characterized the region's political and economic environment for decades (Kryzanek, 1995). Coups, guerrilla wars, demonstrations, strikes, assassinations and states of siege have all taken place as Latin America has struggled with a corporatist and elitist tradition. Kryzanek (1995) describes the many

[15] The Washington Consensus is a phrase used since 1989 to describe a relatively specific set of ten economic policy prescriptions that were considered to constitute a standard reform package developed by Washington, D.C. based institutions such as the International Monitoring Fund (IMF), the World Bank and the U.S. Treasury Department, to be applied in countries facing severe economic crisis such as Argentina Mexico, and other South American Countries.

myths that have filled Latin America's history books from Bolivia's 183 governments since independence, to Venezuela's 23 constitutions, to Ecuador's Jose Maria Velasco Ibarra, who completed only one of his five terms in office.

Latin America has been positioned as the third most unstable region in the world in the post-war era; political instability has been constant in the region (Goldstone *et. al*. 2005). According to Schatzman's, (2005) analysis of 18 Latin American countries from 1971 – 2000, there were 20 coups d'etat, 451 political assassinations, 217 riots, and 113 crises that threatened to bring down the ruling government. Only three Latin American countries[16] were consistently democratic over the 30 year period: Costa Rica, Colombia, and Venezuela. The remainder of the countries switched from a democracy to an autocracy (or vice versa) at least once. In addition, Foran (2005), and Wickham-Crowley (2001) argue that even though the majority of countries undertook democratic reforms in the 1980s and 1990s that promoted stability, the region continues to experience political instability. In the Andean region against a background of profound structural changes, the crisis of political parties as a genuine mechanism of representation has created favourable conditions for the development of waves of populist leaders who, through a justified criticism of the traditional "political class", tend to break the elitist political game and its customary structures, demanding and creating a new form of representation of their interests in the state and new forms of distribution of national income. This has been observed in the Venezuela of Hugo Chavez, Evo Morales' Bolivia, Ollanta Humala's Peru and the Ecuador of Lucio Gutierrez, as well as to some extent in Uribe's Colombia (FT.Com, 2009; Mainwaring, 2006).

Latin America's politics have their roots in a system called corporatism. Corporatism is a system of governing whereby various socioeconomic groups or corporations surround the central authority and compete for power and for a place at the governing table (Kryzanek, 1995). During the days of the Spanish crown, corporations were the established aristocracy, the Catholic Church and the military were the conquerors. In this period, no democratic process existed; the Crown was all-powerful and authoritarian. This system created a closed, exclusive structure, with political and economic inequalities. Even into

[16] Argentina, Bolivia, Brasil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, México, Nicaragua, Panamá, Perú, Uruguay, and Venezuela.

the contemporary period, the conflict between the traditional elitist corporations and new power contenders such as labour unions, student associations, peasant movements, political parties, leftist revolutionaries and drug cartels has continued, creating great political instability (Kryzanek, 1995); Alesina *et. al*. (1996) argues that social and economic polarisation has driven poor groups to pursue their political and economic objectives outside normal channels. This has lead to a higher participation by these groups in violent political movements that cause high levels of uncertainty to investors and restrict capital accumulation. This political instability may affect the implementation of corporate governance differently in the 5 Andean countries.

2.1.4 Economic Factors

Latin America's current economy is one that is rapidly changing in dealing with the effects of its past policies and structures. Wiarda (1995) describes Latin America's past economic structure as mercantilist; this structure began to change in the late 1980s and early 1990s. In mercantilism, according to Wiarda, the state is the driving force behind economic growth. The state, rather than the marketplace, mobilizes capital, sets priorities, invests, and regulates wages, prices and production. In communism the state has control of the economy, and in capitalism, the market has control of the economy. Mercantilism occupies an intermediate space in the spectrum of economic structures with communism on the left end and capitalism on the right (Wiarda, 1995).

Mercantilism implies that the state owns much of the economy, and it heavily regulates prices, production and wages (Wiarda, 1995). Licenses or special permits are required for many activities such as starting a business. This system creates an extremely bureaucratic, expensive and slow economic process. The legacy of bureaucracy can be traced back to the Spanish crown. In fact, the term "red tape" came from the Spanish monarchy's practice of tying petitions in need of attention in red ribbons and storing them in chambers awaiting a final decision. These red-ribbon clad petitions frequently remained in the chambers for years awaiting action (Sharpe and Simoes, 1996).

Not only was the state the largest generator of production and services in Latin America, but it was also the largest employer. These systems created a process whereby people were given jobs in exchange for loyalty to the government in power.

> "The state in Latin America is not a neutral referee; rather, it uses its powers to reward its friends and punish its enemies" (Wiarda, 1995, p 115).

Thus, those who were well connected received positive responses to, for example, petitions to the state, to requests for licenses to open businesses, or to lobbying to be given a monopoly in a sector of the economy. Those who were not well connected or who were poor were kept waiting for months or years or were ignored (Wiarda, 1995).

The mercantilist system's effects are extensive. With economic power highly linked to political power; the quest for this power often became extremely violent and severe. In Latin America, control of government implied not only political power and prestige but also control of the state's economic resources and the patronage resulting from that control (Sharpe and Simoes, 1996). Social scientists, such as the Brazilian anthropologist Da Matta (1991) note that laws are abundant and changeable which makes it difficult to obey them all; the Peruvian economist De Soto (1989) calls this legal system "mercantilist," and argues that the mercantilist state is bureaucratised and passes laws that favour small-interest groups against the interests of the majority. Pereira's (2000) term for this form of legality is "elitist liberalism," which is more historically accurate than De Soto's since Latin America's legal systems took on this distinctive form during the nineteenth century, when liberalism was the reigning ideology, rather than during the colonial period.

Since the 1990s, Latin American countries have been moving away from mercantilism, which supported state-led development through high protective barriers such as trade quotas and tariffs, toward market-determined, open economies. Thus, privatisation, which includes the selling of many government-owned firms, occurred. Bovenberg and De Mooij (1994) found that before economic reforms, corporations could only improve their performance through close ties with governments. However, through reforms, efforts are being made to create genuine internal competitive advantages by improving technology and marketing expertise.

Liberalisation has also taken place, and consequently many trade barriers have been removed to allow for more open trade. The North American Free Trade Agreement (NAFTA) was an outcome of this process. Other regional trade agreements such as the

Andean Community (Comunidad Andina, CAN) and the Southern Common Market (Mercado Común del Sur, Mercosur) have also contributed to the changing economic environment in the region, which has led to an economic renaissance in Latin America in the 1990s (McCoy, 2002). But, just as Latin America's economic history has been challenged with crises, including the "lost decade" of the 1980s where almost all Latin American countries lost ground in the development process, the region continued to deal with crises in the 1990s. Consequently, the current Latin American economy is one in which the countries of the region are changing and at the same time coping with the institutions, infrastructure, and habits that the past system created (McCoy, 2002).

Historically, in Latin America, the state has been paternalistic, providing for its citizens. Having operated as the largest employer in the region, the state was depended upon to support the countries of Latin America economically. In many countries, state-owned enterprises (SOEs) dominated the petroleum, steel, transportation and insurance industries but despite their monopoly status, they frequently operated at a loss (McCoy, 2002). The sale of these inefficient enterprises brought enhanced fiscal revenues via income from the sale of assets and the reduction in subsidies to public enterprises. But many people have lost their jobs or were faced with new sets of rules. Therefore, much social upheaval has accompanied the economic restructuring and it continues to run deeper as McCoy (2002) notes:

> "…as Latin American leaders gained experience with this first generation of economic reform, it became clear that they would have to address far more fundamental features of their societies that have long hindered development" (p 8).

These changes included labour market liberalisation, privatisation of social services providers, new regulatory regimes, judicial reform and improving the content and quality of education (McCoy, 2002). This change in economic factors and more corporate involvement means that corporate governance is vital to help stabilise the economy and enable growth to occur.

2.1.5 Law and the Judiciary

Latin America's constitutional law, which superficially looks much like the constitutional law in a consolidated democracy, is very different in Latin America because of the ease with which constitutions can be changed. It took President Zedillo just one month to amend the constitution in Mexico (Vargas 1996). And President Chávez swore in his oath of office that he would abolish Venezuela's constitution (El Nacional 20 January 2007). He gained widespread popularity by using a constitutional convention to circumvent the power of the opposition, and control Congress and a judiciary that is widely seen as corrupt El Pais, 3 December 2007). There is widespread mistrust of the judiciary in Latin America (Hammergren 1998, Prillaman 2000). President Fujimori mounted a popular coup against his own government by claiming, in part, that the judiciary was corrupt and removed three justices who voted to uphold a constitutional prohibition against running for a third term (Tanaka, 2002).

These constitutional changes reflect the legal systems that fail to resolve disputes in a legitimate fashion. Although Latin America belongs to the civil law family (La Porta *et. al.*, 1998), the law is different in Latin America from the civil law nations of Western Europe. The Law is both pervasive and marginalised as there are too many rules and their application is uncertain and uneven. Equality of law is a meaningless abstraction since the powerful need not obey the law which is designed primarily to control the behaviour of the lower classes (Holston and Caldeira, 1999; Méndez *et. al.*, 1999; Pereira, 2000). The wide gap between the formal legal order and the reality of the way the law operates has led some scholars to question whether Latin America truly belongs in the civil law family given the wide gap between the formal legal order and application of law (Garro, 1995; Mattei, 1997). The state of the legal system and the judiciary may make it difficult to implement corporate governance.

2.2 Summary

This chapter has presented an overview of some of the Latin America characteristics that may help to understand the region business environment, culture, history, and the trends and limitations of corporate governance reforms at country level, especially in the Andean region countries. Latin America represents a new hope and inspiration for many people in the world, as well as social justice campaigners and progressive analysts. After decades of economic failure in the region since the 1980s, rising populist regimes have led the way in a search for alternative regional economic models that benefit the poorest members of Latin American societies. As new left-leaning presidents reject the USbacked model of free trade in favour of regional versions of commerce and cooperation, Latin America is being closely watched in its attempts to build an alternative economic model that prioritises pro-poor development, the redistribution of natural resources and people-led social change. In this rich mix of cultures, politics, economies, and legal systems, this thesis examines corporate governance in Andean context. The next chapter continues to develop the background of the research presented later in this thesis by introducing a review of previous studies that have examined the implementation of corporate governance standards in both developed and developing countries.

CHAPTER THREE

Literature Review

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Literature Review

Introduction

Opinions around the world differ as to what is the best form of corporate governance, and the reason why the subject has become such a focus of attention varies from country to country. In the US, corporate governance grew in importance as a result of the increase in mergers and acquisitions in the 1980s (Holderness, and Sheehan, 1988) and the Enron Scandal. In the United Kingdom, after a series of major scandals in the 1980s, the subject moved up the political agenda. In France privatised state companies have had to meet the demands of institutional investors in France and abroad (Mallin, 2004).

Further, current corporate governance concerns can be related to the emerging markets crisis and multinational companies' failures such as the East Asian financial crisis of 1997, which saw the economies of several regional nations affected by the exit of foreign capital after property assets collapsed which showed the major risks that investors could face when dealing with poorly managed companies (Lemmon and Lins, 2003; Mitton, 2002). The lack of corporate governance mechanisms in many countries of that region highlighted the weaknesses of the institutions in their economies (Cleassens *et al*., 2000).

The European Community has also witnessed the failure of big firms such as Partmalat and the Royal Ahold (Mallin, 2004). Many Latin American companies, widely-owned, family-owned and state-owned, have also reached a point where improving transparency, strengthening minority shareholders rights, and defining clear board practices have become key for potential growth and competitiveness; this urgency has also been reflected in the sanction of corporate governance codes in most of the Latin American countries (Capaul, 2003).

In the current debate on governance issues there is the view that the Anglo-American style capital market, with its emphasis on the separation of shareholders from the firms they invest in, too often results in poor managerial accountability and substantial departures from shareholder value maximisation. In addition, there is now widespread awareness that managers may take actions that hurt stakeholders (Charkaham, 1994).

The growing interest in the topic has resulted in a significant increase in corporate governance reforms around the world and the manner companies are governed is now considered an international issue, with corporate governance codes being developed at a national and global level. At the national level there have been developments in the UK, issuing the Code of best practice (Mallin, 2004). There also have been reforms in the US where compliance with the Sarbanes-Oxley Act has been a requirement for all listed companies since July 2002 (SOX, 2002). Other well known corporate governance codes are the South African's King Reports I, II and III; and the OECD internationally applicable code of best practice (Mallin, 2004).

However, issues of governance are approached differently by the fields of finance, economics, and management. This literature review section pulls together many of the themes currently explored in the corporate governance literature and presents a characterisation of the issues, to provide a basis for analysis. The chapter focuses on recent studies that examine developing countries, especially in Latin America. Most studies on Latin America have concentrated on the more economically advanced countries of the region such as Argentina, Brazil, Chile and Mexico. Apart from the fundamental aspects of corporate governance this literature review also focuses on how corporate governance affects corporate performance and management strategic decision-making. It is expected that if all stakeholders of an organisation see value in corporate governance, a positive and helpful attitude by all stakeholders can then be cultivated. Research and developments in the western world are also considered even though the Latin American environments and culture are not necessarily similar to that of the western world where most of the concepts and theoretical frameworks of corporate governance originated. First the chapter covers: corporate governance history and definitions, followed by the regulatory framework, then codes of best practices and guidelines starting with the UK, US, and then other areas, comparisons with the systems of other emerging markets, boards of directors, and board committees, an overview or risk management and internal controls. Finally, a summary of the general frameworks and mechanisms of corporate governance applied through Latin American countries is noted.

3.1 Corporate governance history and definitions

Corporate governance is not a universal concept. In fact, the expression is matched in Spanish to its literal translation '*gobierno corporativo'* or in Portuguese '*governança corporativa*', but both terms have a misleading meaning. First, the word *corporation* (Corporate) in Latin American legislation is used to describe a non-profit organisation. In addition, both *gobierno* and *governança* do not necessary connote the same as corporate governance, and in Latin America they have a specific technical meaning granted by local doctrine. One of these corresponds to a way of administration for a nation and the formulation of laws. It is argued that the similarity of some words masks important differences in meaning, and much of these differences have a lot to do with imperceptible features of the legal culture (Zamora, 2004).

Corporate governance has been practised for as long as there have been corporate entities. However the study of the subject is less than half a century old. In fact, the phrase corporate governance was barely used until the 1980s (Davis *et al.* 1994; Coffee, 2001a). In the 19th century, in the United States, state corporation law allowed corporate boards to govern without the unanimous consent of shareholders to make corporate governance more efficient (Monks, and Minow, 2004).

In the 20th century, in the aftermath of the Wall Street Crash of 1929, Berle and Means (1932) reflected on the changing role of the modern corporation in society; which continues to have a profound influence on the conception of corporate governance in scholarly debate today (Tricker, 1984).

At its most basic level corporate governance deals with issues that result from the separation of ownership and control (Denis and McConnell, 2003) but goes beyond this by establishing transparent and responsible relationships between managers and owners. The presence of strong corporate governance standards provides increased access to capital and thereby aids economic development attracting investors by assuring them that the business environment is fair and transparent and that companies can be held accountable for their actions or lack thereof, their investments can be protected and contracts enforced (Chambers, 2002).

According to the World Bank corporate governance refers to the structures and processes for the direction and control of companies. It concerns relationships among the management, board of directors, controlling shareholders, minority shareholders and other stakeholders. Good corporate governance contributes to sustainable economic development by enhancing the performance of companies and increasing their access to outside capital (World Bank, 2006). In the World Bank's view, corporate governance structures entail rules and procedures for decision-making on corporate affairs. It provides the structure through which company objectives are set, as well as the means for attaining and monitoring the performance of those objectives.

In an Andean context the Andean Development Corporation (CAF) is supporting the application of corporate governance standards in Andean countries and defines corporate governance as the 'formal' and 'informal' practices that govern the relationship between the board, managers and stakeholders. According to CAF corporate governance practices ensure a better use of companies' resources, enhance transparency, and mitigate the problems of asymmetric information (CAF, 2005).

Traditional definitions of corporate governance are narrow, focusing on legal relations between managers and shareholders. More recent definitions extend the boundaries of governance to consider the role that various stakeholders play in shaping the behaviour of organisations. These different ways in which corporate governance is defined generally engage the mechanisms by which a company, organised in a corporate limited form, is directed and controlled. It usually includes the relationship between shareholders, creditors and other stakeholders. Issues of fiduciary duty and accountability are often discussed within the framework of corporate governance. A definition which takes account of different views is well suited for this review of the literature, which has the purpose to further the understanding of commonalities and differences in corporate governance practices among the Latin American Andean countries through an analysis of corporate governance regulations and elements of the underlying legal framework. Thus, a stakeholder approach using accountability and legitimacy is used to frame the empirical analysis of the factors affecting the application of corporate governance principles through the Latin American Andean region. This approach accords with Solomon (2007) who defines corporate governance as:

> "The system of checks and balances, both internal and external to companies, which ensures that companies discharge their accountability to all their stakeholders and act in a socially responsible way in all areas of their business activities" (p 14).

Corresponding to this broad definition, the objective of corporate governance is to maximise the overall contribution of a company to all its stakeholders. Corporate governance represents the relationship among stakeholders that is used to determine and control the strategic direction and performance of the company. Accountability is a key element strengthening corporate governance in a way that provides a transparent framework for governing critical decisions, procedures and activities.

However, one major difficulty in discussing corporate governance is that there is disagreement as to the goals of corporate governance, and what is the role of companies in an economy. Corporate governance models have been classified to two groups. First is the agency model which goes back to the influential article of Jensen and Meckling (1976) who see corporations as consisting of managers who act as the agents of the shareholders. A basic concept of this model is that the company belongs to the shareholders and must be run in their interests, creating value on their behalf; the objective of management is to maximise the market value of the company, and directors are only accountable to the owners. This definition is associated with the Anglo-American view of economies in which there is an active market of control for ownership. Counter to this, shareholder approaches are criticized for favouring short-term profit maximization at the expense of the long run and undermining the interests of third parties other than the stockholders (Handy, 2002).

The stakeholder model of corporate governance sees the company not simply as an agent for the shareholders to maximise wealth, but also as an entity with responsibilities to other stakeholders, including employees, creditors, suppliers and society as a whole. As the interests of stakeholders are diverse, and some times conflicting, a compromise between the pursuits of the various interests is needed; this compromise is the role of managers (Berle and Means, 1932), and a board, where the different interests may be represented, leading to decisions for the overall interest of the company. This stakeholder's view also includes the social responsibility of the company (Warhurst, 2001; Zedek, 2006).

The different conceptions have their counterpart in different aspects of corporate law, from the composition and election rules of the board of directors, to the disclosure of company information, up to the rules that determine the company management and its running structure and also mergers, takeovers, and the legal framework of capital markets (Aglietta and Rebérioux, 2005).

The next section introduces the characterisation of the normative corporate governance model which provides the foundation for the comparative analysis of the adoption of corporate governance principles and guidelines through the Latin American Andean countries.

3.2 Regulatory Framework

The regulatory framework covers matters such as the legal rights of shareholders and others and their ability to be compensated in case their rights are violated. The framework includes the protection of shareholders through regulation and through requirements for full disclosure of risks. These are just two examples. There are a great number of other factors that impact the way a company is controlled, managed and held accountable, and many of these factors fall directly in the sphere of regulators.

The existence of an appropriate legal framework has been identified as a fundamental element, without it the benefits of attracting investors could be made more difficult (Thome, 2000). Furthermore, local codes, statutes and business practices from different regions are updated reflecting legal developments achieved in various part of the world. Thus some Latin American financial institutions, long used to vigilant regulation, have put up little resistance to the reinforcement of corporate governance standards. Colombia and even Ecuador are working hard to form better practices. However, Venezuela and Bolivia are embarking on a process of forced nationalisation (Zettelmeyer, 2006).

Further, the corporate governance perspectives of both companies and public policymakers provide a framework for corporate governance that reflects the interaction between internal groups, which defines the relationship among companies' key players and external forces such as the regulatory framework, the market and the legal environment. These two forces together govern the behaviour of company's participants and the issue of corporate governance regulations.

Other important sources of corporate governance are national rules and regulations related to the trading of shares involving the public. One fundamental goal of capital markets regulation in most countries is to ensure that investors receive adequate information about companies and their activities so that they are able to make investment decisions and exercise shareholders rights appropriately. As with corporation laws and codes, the extent of protection afforded to shareholders by stock markets varies from country to country (La Porta *et al*., 1998).

The principal source of corporate governance in Europe is the legislation of the individual European country concerned. Although European Union legislation has an impact on certain aspects of corporate governance, it does not have unified corporate governance practices to the same extent as under US federal law and regulations, which together with stock exchange rules have tended to unify American practices. Thus, there is a greater divergence on corporate governance rules among publicly traded European companies that there is among their North American counterparts (Conyon, and Mallin, 1997; Maw *et al*., 1994).

In Latin America the effort to strengthen corporate governance and enforcement is a desire to enhance the investment climate in the region to the benefit of both investors and entrepreneurs. Most countries in the region have lengthy court processes, sometimes further dented by lack of judicial expertise. This discourages shareholders from exercising their rights to take private actions to ensure that they receive a fair return on their investment, knowing that any challenge will take at least two to three years, or even up to six years or longer when appeals continue to the Supreme Court (Mirow, 2005). Thus, some countries, such as Colombia and Peru, have introduced alternative mechanisms for dispute resolution.

Law enforcement for publicly traded companies in some Latin American countries is implemented by a securities commission headed by an appointed president. The Chilean and Colombian presidents can be removed freely, while greater political independence is sought in Peru by providing fixed-term appointments and a provision that the president can only be removed for committing a major offence (Mirow, 2005). At the same time most Latin American countries have detailed systems and procedures for ensuring due process. Decisions to fine or sanction are taken by the Superintendent-Delegate for Investigations in Colombia or in some cases directly to the Superintendent of Securities (eStandards Forum, 2009); in Peru an administrative court makes the initial decision, which may be appealed to the commission board (eStandards Forum, 2008).

Other suggested mechanisms for dispute resolution include private arbitration as one way to achieve more efficient resolution of shareholder disputes. Private arbitration for corporate disputes between companies and shareholders is permitted in most Latin American countries. Colombia and Peru appear to have promoted the use of arbitration for settlement of shareholders disputes more actively (Bedicks and Arruda, 2005).

Accounting plays a central role in corporate governance because it is essential to any disclosure regime concerning information about companies' activities. A sound disclosure system is fundamental for the exercise of shareholder rights, for the monitoring of corporations, and in providing discipline to management (OECD, 1999).

An effective system of disclosure also requires the participation of organisations and individuals with sufficient expertise and a reputation and honesty to evaluate and verify the information that to be disclosed. Making investment decisions, shareholders rely on these intermediaries who include auditors, credit rating agencies, financial analysts, and the financial press. These individuals and organisations are considered the "gate keepers" to the financial markets (Coffee, 2002).

Within the limits of law, regulations and the applicable rules of private bodies, companies have discretion to shape their own international mechanisms of corporate governance, including the terms of managers' contracts, the composition of corporate boards, and the international structure of the company. The degree of discretion varies from country to country. The legal mobility of American companies from state to state and the discretion given to company directors tend to reflect a basic "enabling approach", i.e., 'everything is permitted unless it is specifically prohibited' compared to the greater restrictions on mobility and discretion in Europe and the US that revel a more “mandatory approach”, i.e., ‘everything is prohibited unless specifically permitted’ (Coffee, 1999). In order to influence the exercise of this discretion, industry groups and individual investors have prepared codes, reports and statements of good corporate governance that they have presented to, or pressed upon, the management of corporations. In United States, the business Round Table, leading organisations of corporate executives, and institutional investors, such as the California Public Employees’ Retirement System (CalPERS) and TIAA-CREF, have been active participants in this movement.

3.3 Codes of Best Practice and guidelines

There are a good number of corporate governance codes and standards, which reflect differing legal traditions and national practices. It is generally accepted that the Cadbury Report (1992) has been of significant influence around the world. During the 1990’s other countries have followed with their own codes on corporate governance including the Viénot Report (1995, 1999) from France, the King Reports I, II, and III from South Africa, (King I, was the first emerging market code), and the OECD Principles of Corporate Governance (1999) (Bradley *et al*., 1999).

As with the Cadbury Committee Report (1992), these reports are particularly concerned about the potential abuse of corporate power. They call for better structured boards; recommend the use of a greater number of outside, non-executive directors; and argue for the separation of the role of chairman of the board from chief executive, as well as other checks and balances to avoid executive domination of decision-making and to protect the rights of shareholders, particularly minority shareholders, and other stakeholders.

3.3.1 Developments in the UK

In the UK during the 1990s a number of committees were set up to consider aspects of corporate governance. Each committee issued a report with its recommendations. The UK Committee on the Financial Aspects of Corporate Governance (the Cadbury Committee) was set up in May 1991 by the Financial Reporting Council, the London Stock Exchange and the accounting profession to address the financial aspects of corporate governance. The committee was formed as a result of the continuing concern about standards of financial reporting and accountability, heightened by the BCCI and Maxwell scandals and the controversy over directors' pay. In 1992, the Cadbury Report was published as the first in-depth statement on corporate governance and a model for sound practice worldwide, its main recommendations dealing with the division of responsibilities among top management to ensure that the decision-making power was not delegated to one person. The work of the committee focused on the control functions of boards of directors, and on the role of auditors. The setting for the report was to ensure Britain's competitive position by granting freedom to the boards of listed companies to drive their companies forward within a framework of effective accountability. The principles on which the code is based are those of openness, integrity and accountability. The report also introduced the concept of 'comply or explain' (Chambers, 2002; Maw *et al*., *1994*).

The Greenbury Report in 1995 focused on the setting and disclosure of directors' remuneration. The Greenbury Committee proposed that the fundamental principles of accountability, transparency and performance would be encapsulated in a new code of best practice on directors' remuneration (Mallin, 2004).

The Hampel Report in 1998 made recommendations for further changes, and brought together all the previous recommendations and submitted a proposed Code to the London Stock Exchange with which listed Companies should comply. Both the Cadbury and Greenbury reports were responses to things which were perceived to have gone wrong – corporate failures in the first case, unjustified compensation packages in the privatised sector in the second place, and both concentrated largely on preventing abuse of power (Mallin, 2004). The Hampel report consisted of 17 principles of corporate governance and 56 conclusions and recommendations and stressed the importance of the 'comply or explain' rule (Hampel, 1998). Canyon and Mallin (1997) and Weir and Laing (2000) illustrate that, regardless of the voluntary nature of the Cadbury Report, British listed companies complied with the Code's recommendations in terms of the separation of the CEO and chairman of the board, the percentage of independent directors on the board, and the establishment of board committees.

The London Stock Exchange published its 'Principles of good governance code of best practice', known as the Combined Code on Corporate governance (the Combined Code), in June 1998. The Combined Code is a voluntary code, but is attached to the UK Listing Rules so that listed companies in the UK have to comply or explain. With the agreement of the Hampel committee the London Stock Exchange introduced a number of changes on the committee's original draft. The Combined Code contains broad principles and more detailed specific provisions. After the publication of the Combined Code an amendment to the UK Listing Rules was introduced requiring that listed companies had to disclose how they had applied the principles and complied with the Code's provisions in their annual report and accounts. Any deviation from the recommended best practice has to be stated and explained. The Combined Code general principles and detailed 'best practice' guidelines for companies relate to the directors and the balance of power on the board, directors' remuneration, communication with shareholders, and financial reporting and auditing.

3.3.1.1 The UK Corporate Governance Code (formerly the Combined Code)

The UK Corporate Governance Code (previously called the Combined Code on Corporate Governance) (the "Code") is the principal set of corporate governance principles applicable to listed companies in the UK; responsibility for the oversight of the Code rest with the Financial Reporting Council (FRC). The code sets out standards of good practice in relation to the board leadership and effectiveness, remuneration, accountability and relations with shareholders. On 28 May 2010, the FRC published an updated version of the Code, together with a report summarising the outcome of its recent consultation process and the main issues that were raised through the review period. The Code is to apply to companies with reporting periods beginning on or after 29 June 2010.

The FRC has put forward a series of new principles on the chairperson's leadership role and the skills and independence of non-executive directors whereby such directors should spend more time on the job. There are also new principles covering the board's responsibility for, and handling of, risk and proposals to emphasise that performance-related pay should be aligned to the long-term interests of a company and its policy on risk. The current edition of the Code includes two sections. Section 1 is a code for listed companies, and Section 2 is a code for institutional shareholders investing in listed company shares; pressure is being brought to bear on institutional investors to give more attention to corporate governance issues. The code tries to cover an original concern of the Cadbury Report that companies faced with minimum standards in law would merely comply with the letter and not with the spirit of the rules[17].

There is agreement that the Code and its predecessors have contributed to clear improvements in governance since the first code was introduced in 1992. There has been also consensus for retaining the current approach requiring listed companies to "comply or explain" against the Code, rather than moving to a prescriptive regime reliant on legislation and regulation (FRC, 2010). There is relatively little new drafting in the Code, However the FRC has achieved a change in tone by promoting Supporting Principles to Main Principles. For example, the Chairman's responsibility for leadership of the board and the responsibility on non-executive s to offer constructive challenge are now Main Principles, meaning that it will be necessary to state in annual reports how those principles are applied. Other matters, such as the need for the board to have a balance of executive and non-executive directors have been given less emphasis by being moved to the Supporting Principles. No statement is required in the annual report as to how Supporting principles are applied.

The new Code re-emphasises the role and responsibilities of the board. The most discussed aspect of increased board accountability is a new requirement for all directors of FTSE 350 companies to be put forward for re-election by shareholders every year. Yet to come is a new Stewardship Code. The Stewardship Code aims to balance the focus on the responsibilities of the board by encouraging institutional investors to engage constructively with companies. In the meantime, the provisions on institutional investors from the combined Code have been moved to the back of the UK Corporate Governance Code but will be deleted when the Stewardship Code takes effect.

In relation with compliance with the Combined Code a 2007 consultation paper on behalf of the FRC reported that only 33% of listed companies were fully compliant with all the Combined Code provisions (PIRC, 2007) but a key provision such as separating the CEO from the Chair had an 88.4% compliance rate spread over all the rules, this has not been taken necessarily as a poor response; and compliance is rising (Thomas and de la Rama,

[17] Para 1.10 of the Cadbury Report

2008; Crawford, 2007). Pensions Investments Research Consultants (PIRC), as a leading investor body, maintains that poor compliance correlates to poor business performance. A difficulty has been the aversion to a 'one size fits all' solution, which may not be right for every organisation, and that accountability can be achieved through the market, rather than the through the law (Sum, 2009).

3.3.2 Developments in the US

In the United States, corporate governance regulation is not handled by a single body acting alone, but instead is derived from a variety of sources at both federal and the state levels. Relevant federal law provisions generally apply to those companies which have registered securities under the US Security Exchange Act of 1934, and relevant regulations are those adopted by the US Securities and Exchange Commission (SEC) and the Sarbanes-Oxley Act (2002), which includes specific corporate governance-related provisions and requires detailed rulemaking by the SEC and other bodies such as the national securities exchanges, e.g. New York Stock Exchanges (NYSE) and national securities associations such as the National Association of Securities Dealers (NASD), and the listing rules of stock markets on which the companies have their shares listed. Furthermore, companies established in the United States must comply with the relevant laws and regulations of the state in which they are incorporated. Non-US companies, or those which are not incorporated under the laws of any of the US states, possessions or territories, and which are trading on a US exchange or market, must follow US corporate governance standards to the extent required by the US federal securities laws and the relevant rules of the stock market on which the companies' shares are traded.

3.3.2.1 Sarbanes Oxley ACT, 2002 Provisions

The Sarbanes-Oxley Act (SOX), of July 2002, is a major source of corporate governance requirements in the United States. It aims to reinforce corporate governance, strengthen auditors' independence, require significant additional public disclosure, and increases the scope and severity of liability under the federal laws for public companies, their executive officers and directors, auditors' legal counsel and others. SOX introduces corporate law changes relating to financial reporting, personal loans from companies to their directors, whistle blowing and the destruction of documents. In addition Sarbanes-Oxley severely restricts the range of additional services that an audit firm can provide to a client. There are increased penalties for directors and professionals who have conspired to commit fraud.

While the Act lays down detailed requirements for the governance of organisations, there are some sections which are considered critical (see Table 3.1), such as Section 302 (internal control certifications), Section 404 (assessment of internal control) and Section 409 (real time issuer disclosures). Section 302 instructs that a set of internal procedures should be designed to ensure accurate financial disclosure. The signing officers must certify that they are responsible for establishing and maintaining internal controls and have designed such internal controls to ensure that material information relating to the company and its consolidated subsidiaries is made known to such officers by others within those entities, particularly during the period in which the periodic reports are being prepared (SOX, 2002)

Table 3.1 – Sarbanes-Oxley Act Sections 302, 404, 409

	302	404	409
Required:	· Quarterly certification of financial reports · Disclosure of all known control deficiencies · Disclose of acts of fraud	· Management annually certify internal controls · Independent accountants must attest report · Quarterly change reviews	· Monitor operational risks · Material event reporting · 'Real-time' implications – 4 business days for report to be filed
Responsible	• CEO • CFO	• Management • Independent auditor	• Management • Independent auditor

Note: this table shows a summary of some SOX sections

SOX Section 404 requires that each annual financial report must include an internal control report stating that management is responsible for establishing and maintaining an adequate internal control structure, and an assessment of the effectiveness of the internal control structure. In addition, registered external auditors must attest to the accuracy of company management's assertion that accounting controls are in place, operational and effective. SOX set up a requirement for audit committees to be composed exclusively of independent board members and these committees have extensive responsibility for the appointment, compensation and supervision of the directors. The Act also aims to promote rules to address conflicts of interest where analysts recommend securities when their companies are involved in investment banking activities. Moreover, the external control of companies' accounting was improved, in particular through the Public Company Accounting Oversight Board. Section 409 is listed within title of the act (Enhanced Financial Disclosures) and relates to 'Real time Issuer Disclosure'. Companies issuing shares are required to disclose to the public, on timely basis, information on material changes in their financial condition or operations (SOX, 2002).

3.4 Other important developments around the world

In a context of the increasing internationalisation of the world economy, local initiatives of development, policies of decentralisation, changes in traditional activities, the creation of great geopolitical and economical regional entities, and the strategies of firms' means that the importance of corporate governance is not only limited to Anglo-American markets. However, due to conceptual differences in company law throughout the international community, each national code has its own peculiarities. The comparative literature is rich with descriptions of national corporate governance systems. These studies are useful in order to highlight the existing differences between countries and to appreciate the historical roots of the different systems (Aguilera, 2008; Aguilera and Jackson, 2003).

Processes such as liberation and internationalisation of economies, developments in telecommunications, the integration of capital markets the transformation of the ownership structure of companies due to the growth of institutional investors, privatisation and rising shareholding activism, have increased the need for more effective mechanisms and appropriate incentives schemes to improve corporate governance systems (OECD, 2005).

It is argued that countries with effective corporate governance systems become not only attractive locations for domestic companies to prosper (World Bank, 2000) and invest (La Porta *et al.* 1998), but also for foreign investors, and as a result promote economic growth (Levine, 1999). Effective corporate governance systems support the development of internationally competitive companies (Porter, 1990). McKinsey surveys (2000, 2002) of investors' perceptions indicates that investors report that they are willing to pay more for a company that is well governed, other things being equal.

This section describes several regional or national systems of corporate governance in an attempt to ascertain a theoretical framework that will provide the basis to better understand the corporate governance systems that apply through the Latin American Andean countries and to structure the empirical analysis.

3.4.1 The King Report on Corporate Governance for South Africa

In 1994 the King Report on Corporate Governance published by the King Committee on Corporate Governance, headed by the former High Court judge, Mervyn King S. C. and was the first of its kind in the country aimed at promoting the highest standards of corporate governance in South Africa, the King I was latter updated in 2002. The King Report emphasises the importance of qualities that are fundamental to the South African culture such as collectiveness, consensus, helpfulness, fairness, consultation, and religious faith in the development of best practice.

Increasing internationalisation and globalisation means that investors and institutional investors in particular, began to invest outside their home countries. King I advocated an integrated approach to governance in the interests of a wide range of stakeholders taking into account the evolving global economic environment together with recent legislative developments. The King Committee on Corporate Governance developed the King Report in Corporate Governance for South Africa, 2002 (King II). King II acknowledges that there is a move away from the single bottom line (that is, profit for shareholders) to the triple bottom line, which embraces the economic, environmental and social aspects of a company's activities. In September 2009 King Report III was released which has a separate chapter on 'Stakeholder Relationship Management'.

3.4.2 OECD Principles of Corporate Governance

Another important global development has been the guidelines on corporate governance published by the OECD in 1998 (the Organisation for Economic Co-operation and Development). The OECD Principles of Corporate Governance were originally endorsed by the OECD Ministers in 1999 and it has since become the international bench mark for policy makers, investors, corporations and other stakeholders worldwide. The OECD principles form the basis for the World Bank's Review of Observance of Standards and Codes.

Under a 2002 mandate from OECD Ministers, the principles were revised to take account of recent developments and experiences in OECD member and non-member countries. In 2004 the revised Principles were agreed by OECD governments. These principles take into account the need for improvement in corporate governance following recent corporate scandals in a number of countries. Furthermore, jobs and pensions are increasingly linked to the performance of stock markets, and both can be endangered by the adverse impact of bad corporate governance.

The OECD principles address five main areas: ensuring the basis for sound corporate governance framework, including effective regulatory and enforcement mechanisms; improving the possibilities for the effective exercise of informed ownership by shareholders; enhancing disclosure and transparency, with particular attention to conflict of interest; protecting for whistle blowers; and tightening the responsibilities of boards.

3.5 Andean Development Corporation (Corporacion Andina de Fomento - CAF)

In Andean context CAF is a multilateral financial institution that was created with the aim of supporting the sustainable development of its shareholders countries and promoting regional integration. The formation of CAF began in 1966 with the signing of the Declaration of Bogotá by the presidents of Colombia, Chile and Venezuela and by the personal delegates of the presidents of Bolivia, Ecuador and Peru. The Declaration contains the wishes of the governments of the signing presidents to achieve economic integration and social development for their people. CAF began operation on 8 June 1970 with its headquarters in Caracas, Venezuela.

CAF was created by the governments of the shareholder states, financial institutions and public and private companies. The Corporation has 17 member countries in Latin America, the Caribbean and Europe. Its main shareholders are the five Andean Countries: Bolivia, Colombia, Ecuador, Peru, and Venezuela. There are "A" and "B" and "C" series shareholders with Series "A" shares subscribed by the governments of each member country, Bolivia, Colombia, Ecuador, Peru and Venezuela directly or through an institution designated by the government. Series "B" shares can be subscribed by governments or public-sector institutions or private entities from member countries. They can be subscribed by private entities from member countries, provided the percentage of their equity interest does not exceed 49% of the total equity in that series, by shareholder country. Series "C" shares are convertible to "B" shares and may be subscribed by legal entities or individuals outside the sub region (see Table 3.2).

Table 3.2 CAF's Shareholders

COUNTRY	REPRESENTATIVE	Type of Share
Bolivia	Ministry of Economy and Public Finance	**A & B**
	Banco BISA S.A.	**B**
	Banco Mercantil – Santa Cruz, S.A.	**B**
Colombia	Ministry of Treasury and Public Credit	**A & B**
	DAVIVIENDA S.A.	**B**
	Corporación Financiera Colombiana S.A.	**B**
Ecuador	National Corporation of Finance	**A & B**
	Banco de Guayaquil	**B**
	Banco Pacífico	**B**
	FILANBANCO	**B**
Peru	Ministry of Economy and Finance	**A & B**
	Banco de Crédito del Perú	**B**
	BBVA Banco Continental	**B**
	Scotiabank Perú S.A.A.	**B**
	Banco Internacional del Perú S.A.A.	**B**
Venezuela	Ministry of Planning and Finance	**A & B**
	Banco de Maracaibo	**B**
	Banco del Caribe C.A. Banco Universal (BANCARIBE)	**B**
	Mercantil C.A. Banco Universal	**B**
Argentina	Ministry of Economy and Public Finance	**C**
	Banco de Inversión y Comercio Exterior, S.A.	**C**
Brazil	Ministry of Planning, the Budget and Administration	**A**
Chile	Development Corporation of Manufacturing	**C**
Costa Rica	Central Bank of Costa Rica	**C**
Dominican Republic	Secretary of Treasury State	**C**
Jamaica	Ministry of Finance and The Public Service	**C**
Mexico	National Finance, S.N.C.	**C**
Panama	Ministry of Economy and Finance	**C**
Paraguay	Ministry of Treasury	**C**
Spain	Ministry of Economy and Treasury	**C**
Trinidad & Tobago	Ministry of Finance	**C**
Uruguay	Central Bank of del Uruguay	**A**

Source: CAF Website, information at 15 April 2010

The 5 founder countries have 12 additional associate countries: Argentina, Brazil, Chile, Costa Rica, Dominican Republic, Jamaica, Mexico, Panama, Paraguay, Spain, Trinidad & Tobago and Uruguay, which are series “C” shareholders; and 15 banks from the Andean Region which are series “B” shareholders. In 2005, the Extraordinary General Meeting approved an amendment to the CAF Establishing Agreement which permits any Latin American country to become a full member of the Corporation by subscribing to Series "A" and "B" shares. As a result, Argentina, Brazil, Panama, Paraguay and Uruguay have signed agreements for additional ordinary capital. These countries are now eligible to become full members of CAF after complying with all the contractual conditions. As a financial institution CAF offers product and services such as: short and long term loans, financial advisory services, guarantees, equity ownership, treasury services, technical cooperation, and, different lines of credit.

CAF has the aim of improving competitiveness and the ability for Latin American companies to access financial funds and as part of this CAF has been promoting the adoption of good corporate governance practices at regional level. It is believed that companies with good governance have the possibility to lower their monitoring costs as well as lessen management-related risks. At the same time this may facilitate better terms in contracting with their stakeholders (creditors, employees, customers, and suppliers) offering greater transparency and accountability. It is also expected that the adoption of good corporate governance practices may help the development of the financial system and stock market (Sullivan, 2008).

3.5.1 The Andean Corporate Governance Code (ACGC)

The ACGC was issued by CAF in 2006 and notes that corporate governance:

> “…are the formal and informal practices that govern the relations between managers and all those who invest resources in the enterprise, primarily shareholders and creditors” (ACGC, 2006, p 9).

According to CAF, corporate governance practices assure better use of resources for managers; add to better transparency of accounts; and reduce the problems of asymmetry of information that characterises the financial markets. Corporate governance practices are very important especially when a company wants to access the capital markets (ACGC, 2006; Gómez-Zorrilla, 2007).

Thus CAF has been working to strengthen corporate governance practices in companies located in the Andean Region. During this process strategic alliances have been created with regional organisations which act as counterparts in the Andean countries. These counterparts are: the Bolivian Stock Exchange (Bolsa Boliviana de Valores - BBV), the Colombian Confederation of Chambers of Commerce (Confecámaras), the Ecuadorian Stock Exchange (Bolsa de Valores de Quito – BVQ), Procapitales from Peru, and the Venezuelan Executives Association (Asociación Venezolana de Ejecutivos – AVE). CAF, in cooperation with these counterparts, has been undertaking programmes such as: publishing standards and guidelines on corporate governance for companies; supporting forums and events; publishing awareness material; implementing pilot cases of good practices in different companies; and funding monitoring and measurement studies related to the adoption of corporate governance practices. CAF also offers non-reimbursable technical and financial support to governments, companies and members of the academic sector engaged in corporate governance related activities. An additional result from the partnership between CAF and its Counterparts is the Guidelines for the Andean Corporate Governance Code (2006), to offer organisations in the Andean Region a group of basic principles that form the foundation for good corporate governance practices.

The guidelines apply to different companies. They include 51 principles, derived from internationally recommended standards. Secondary sections are also included such as the purpose of making organisations more transparent, more efficient, more competitive, and with better risk management.

CAF's guidelines are derived from the principles issued by OECD established in the White Paper (that emerged from the Global Forum of Corporate Governance). However, the code also takes in the legal and economic characteristics of organisations in the Andean Region and international corporate governance developments such as the Winter Report, the Spanish Aldama Report, the Sarbanes Oxley Act and corporate governance initiatives from Andean countries such as the framework for a corporate governance code (August, 2002) elaborated by Confecámaras in Colombia and the corporate governance principles for Peruvian companies (July, 2002) issued by the Peru Security Commission (Comision Nacional Supervisora de Empresas y Valores CONVASEV) in Peru.

The core of CAF's corporate governance guidelines cover shareholders' rights, shareholders' influence in the governance of organisations, disclosure of information and transparency, and the responsibilities of the members of the board of directors, the guidelines focus on aspects related to the attraction of financial resources and the relations between shareholders and management.

The guidelines of the Andean Corporate Governance Code address companies but they can also be applied by governments, regulators, and capital market operators. The idea is that organisations implement them into their statutes and daily practices as a means of making their companies competitive and more attractive to local and foreign investors and also as a tool to reduce and control the level of company risk. There are a limited number of companies on the stock exchanges of the Andean countries and organisations in these countries can be classified in to four classes: (i) Large companies (non-listed companies); (ii) listed companies; (iii) conglomerates and limited companies[18] and; (iv) closed capital companies. The Andean Code is firstly directed at listed companies or companies that appeal regularly to the stock market by issuing securities, even if they only issue fixed income financial instruments.

Companies can decide whether they want to implement the code's guidelines. However, it is expected that promotion in each country by organisations such as chambers of commerce, stock exchanges, regulators, institutional investors, financial analysts, commercial banks, media, and aid organisations would increase the number of companies implementing these corporate governance principles. CAF's Corporate Governance Guidelines are in line with a "comply or explain" view: this entails that companies that decide to implement the guidelines voluntarily need to comply with each principle in the code or justify why they are not complying fully. The reasons that a company may comply only partially or not comply at all with the guidelines should be included in the annual report, or explained in a management report.

3.6 Corporate governance initiatives in the Latin American Andean Region

In an Andean context, each country has been trying to develop individual schemes to improve their corporate governance practices, in most cases with the advice of

[18] Limited companies normally have a minimum and a maximum number of shareholders. In Colombia, for example, the minimum is two shareholders and the maximum is twenty-five shareholders.

neighbouring countries and international organisations such as the Centre for International Private Enterprise (CIPE). Examples of these efforts for each of the five Andean countries are discussed in the next section.

3.6.1 Bolivia

The Chamber of Commerce and Industry of Santa Cruz (CAINCO) has been promoting ethical business standards in public and private sectors by hosting training modules for business people and monitoring, disseminating, and advocating reforms.

The Bolivian Code of Commerce provides general guidance for commercial activities and requires all businesses to keep accounting records. The Superintendence of Pensions, Securities and Insurance (SPVS) is the securities supervisor in Bolivia. Its role as the supervisor is set out by the Securities Market Law. The Bolivian Stock Exchange (BBV) acts as a self-regulatory organisation. The BBV is empowered by the Securities Market Law to establish its own internal regulations that govern its activities as well as the activities of its members.

In 2002, as an outcome of the privatisation process, the government enacted a law specifically for 'capitalised' public companies, which covers various aspects of corporate governance. In addition the banking regulations include various governance requirements for banks and other financial institutions with regard to the creation of audit committees, participation of directors on finance committees, regulation of activities of internal supervisors and the rotation of external auditors (Capaul, 2003). In early 2003, the Bolivian government drafted a bill entitled "Law of Governance of Stock Companies" which was presented to the Bolivian congress in November 2003. However, many companies expressed their opposition to its content (Gomez-García, 2008). Currently a corporate governance code has not been issued within the country. Bolivian companies can use CAF's Andean Corporate Governance Code as a benchmark though.

A Donors Memorandum available on the Inter-American Development Bank (IADB) website points out that the securities exchange is in an early stage of development in Bolivia. The Memorandum explains that this is not only due to the small size of companies there but also because of an "adverse business culture" that lacks transparency and accountability (IADB, 2006). Overall, there is insufficient publicly available information directly addressing Bolivia's compliance with any principles of corporate governance.

3.6.2 Colombia

Colombia is an interesting example of the interplay between legal changes and voluntary initiatives based on incentives to attract capital. The country follows a civil law tradition various laws mandate the preparation and presentation of annual audited financial statements by Colombian companies (Gutiérrez and Pombo, 2005). Large companies, listed or non-listed, must have a statutory audit, and the auditor is responsible for reviewing business decisions and accounting records. Article 203 of the Code of Commerce and Article 13 of Law 43 of 1990 determines the threshold of the annual audit requirement. There are additional requirements for reporting to the Superintendent of Securities[19] for listed companies. Article 20 of Law 45 of 1990 requires the appointment of a *revisor fiscal*[20] by all enterprises which are supervised by the Superintendence of Banking and the Superintendence of Securities, and more than 20 other laws require specific types of enterprises to appoint a *revisor fiscal*. Article 204 of the Code of Commerce contains the procedures to be followed to appoint the *revisor fiscal* (who should be elected by majority vote of the shareholders at the annual general meeting)[21].

The Colombian Stock Market (CSM) was founded at the beginning of this decade. In 2001 the government presented a bill to the Colombian Congress that included corporate governance provisions for certain participants of the CSM but the bill was dismissed by Congress. The Superintendence of Finance has issued some regulations regarding corporate governance and good practice of the securities market, of which Resolution 275 of 2001 is the most successful. It stipulates that issuers of securities to be held by pension

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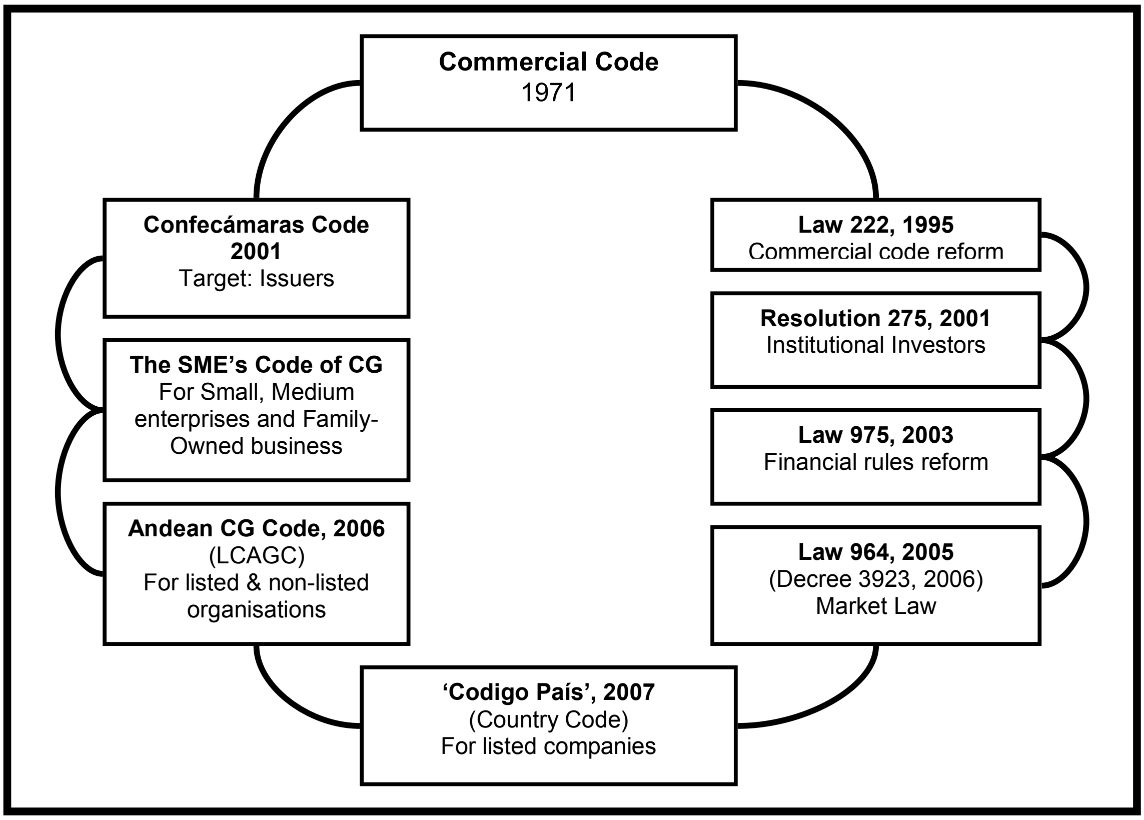
[19] The Superintendence of Securities is the body which oversees the exchange, regulating market intermediaries, brokers' fees, and the financial disclosure of listed companies.

[20] A *revisor fiscal* in Colombia is a practitioner who performs annual audits, but who is also legally required to perform various activities that do not resemble auditing of financial statements. A *revisor fiscal* is seen as a hybrid between an internal and an external auditor.

[21] The law requires an individual public accountant to perform the duties of *revisor fiscal* and states that no person may be *revisor fiscal* for more than five companies at the same time. If an accounting firm is appointed as *revisor fiscal*, a firm's partner or employee who is a legally qualified accountant must be designated to perform the duties of *revisor fiscal,* and the rule limiting the number of positions as *revisor fiscal* a qualified accountant can hold still apply. According to the law it is the partner or employee who acts as *revisor fiscal* and not the accounting firm for whom she/he works.

funds must incorporate good corporate governance standards, and that these should be published by listed companies as a code of practice. Private pension funds hold the largest share of national savings in Colombia (Gluski, 2002). However, pension funds focus their holdings in government bonds and AAA-rated commercial paper, investing only a small proportion of their funds in companies. The Capital-Markets Law aims to strengthen investor protection, improve supervision, regulate trading companies and develop the market infrastructure. Figure 3.1 includes a framework of the main corporate governance rules in Colombia.

Figure 3.1 Main norms regulating corporate governance in Colombia



Note: This figures summarises the corporate legal framework in Colombia

One of the latest developments has been Law 964 of 2005 (Law 964) which was passed on July 8, 2005, adopting some of the provisions of the 2001 bill as well as introducing new ones (Bernal, 2006). This new law was inspired by the recommendations set out by the International Organisation of Securities Commissions (IOSCO) in its Objectives and Principles of Securities Regulations (2003). The purpose of Law 964 is to make sure that Colombian listed companies observe international standards to protect investors' rights and to warrant the fairness, competitiveness, transparency and efficiency of the CSM. Law 964 includes progressive provisions (at least by Colombian Standards) relating to listed companies and issuers[22]. Such provisions refer mainly to regulations of the board of directors, disclosures of shareholders' agreements, compliance with financial and accounting regulations and legal representatives' accountability[23]. Some of the provisions of the Law 964 are yet to be regulated and implemented by the government. Some of the corporate governance provisions will enter into force up to two years after the publication of the law[24].

The Colombian Confederation of Chambers of Commerce (Confecámaras) has helped to build capacity for director training and corporate governance by creating a National Centre of Corporate Governance. The organisation has also developed a 'Corporate Governance Code for Small- and Medium-sized Enterprises', which establishes corporate governance standards for state-owned enterprises, and has gathered support for the passage of a new Law on Capital Markets. It has also outlined clear business registry procedures and distributed a number of publications on corporate governance in Colombia and the Andean region (Sullivan, 2008). Confecámaras has also developed corporate governance training modules in partnership with Cali-based ICESI University.

In addition, Confecámaras has worked to combat corruption through private sector initiatives. It has held several workshops on ethical standards for doing business, promoted ethical codes of conduct, and developed training modules for journalists. It has also organized forums on ethical standards in public procurement in several cities in Colombia and has taken a leading role in the fight against corruption in the country, working with the President's anti-corruption program (Bernal, 2006).

3.6.3 Ecuador

The legal and regulatory framework for corporate governance in Ecuador is mainly set out in the Companies Law, in force since 1964 and most recently amended in November

[22] Law 964 defines listed companies as those whose shares are registered on the stock exchange.
[23] A 'legal representative' is the CEO or another executive empowered to take binding decisions on behalf of the company.
[24] Provisions of Law 964 which will be made compulsory from July 2007, refers to the registration fee listed companies must pay to be allowed to trade their shares in the stock market. (Information taken from the Official Diary (Diario Oficial 45.963) published by Confecámaras, 2006.)

1999 (BVQ, 2006). All Ecuadorian companies are regulated by this law and are subject to the control of the Superintendence of Companies. Additionally the Stock Exchange Law applies to listed companies, and other pieces of legislation also include regulations on corporate governance, such as the Commercial Code, the Civil Code, the Criminal Code and the Law on the Internal Tax Regime.

One recent development which reflects the keen awareness of Ecuadorian lawmakers in relation to corporate governance occurred in 2001. During that year, a new program was launched for the restructuring of debts in excess of fifty thousand dollars which companies owed to financial institutions, with the aim of stimulating the domestic economy, among other things. A new set of regulations was issued requiring companies whose debts were restructured to observe “a good standard of corporate governance”, including adequately protecting minority partners and shareholders.

The National Association of Entrepreneurs (ANDE) aims to promote the economic principles of a market process and cover themes on the current economic situation in Ecuador, and has hosted competitiveness seminars throughout Ecuador along with a national assembly of entrepreneurs. ANDE has begun work on a book based on the conclusions of the seminars and meetings under the title *Competitiveness and National Culture*, which it is expected, will include a summary of free market ideas and themes concerning necessary reforms in Ecuador. Additionally, the Ecuadorian Institute of Political Economy (IEEP)[25] promotes a campaign to educate Ecuadorians at all levels of society to encourage debate and emphasize more democratic and informed processes of decision-making at all levels of government. IEEP produces a weekly television show, *Tribuna Liberal*, and a weekly radio show, *Contrapunto Liberal*, to discuss the main economic and political issues affecting Ecuadorian society. IEEP is one of the only sources of this information in the country. Ecuador has not yet developed its own corporate governance code; therefore organisations in the country implement the principles set out in the Andean Corporate Governance Code.

[25] The Ecuadorian Institute of Political Economy, IEEP, is an organization devoted to public policy analysis and the dissemination of ideas of freedom in Ecuador. It was founded in 1991 as a private, independent, non-profit. IEEP finances its activities through voluntary donations from individuals, corporations and foundations. IEEP conducts research related to socio-economic problems that affect Ecuador.

The Ecuadorian commercial law states that private financial institutions are the only private companies required by law to have a board of directors. The board of directors must always have an uneven number of members, ranging from between five and fifteen. There are also commercial rules against the appointment of a company's bankers, tenants, constructors or suppliers as directors of a company they are related with. Neither may public officials, religious leaders, or persons that have not obtained rehabilitation from bankruptcy should act as company directors. The term of office for directors should be specified in a company's bye laws. However, it is recommended that the term not exceed five years although directors are eligible for re-election.

The enforcement of corporate governance regulations, and particularly those set out in Company law, is believed to be effective (Rodriguez, 2003; Sperber, 2007). Stakeholders can inform themselves about a company's operations and challenge acts which may be illegal or against a company's interest. Nonetheless, the current corporate governance framework has some shortcomings. For example, there are no measures in place to reward or protect whistleblowers, although exposing corporate irregularities is encouraged in principle. Summing up, Ecuadorian corporate governance is founded on the 52 recommendations of the Andean Code, which as detailed in section 3.6.1 is based on the 'Corporate Governance White Paper for Latin America' issued by the OECD (2003, 2004).

3.6.4 Peru

In early 2005 the Apoyo (support) Institute organized a series of roundtable discussions to serve as a baseline to drafting a "National Business Agenda" for Peru. The organization worked with the *El Comercio* newspaper and the Peruvian business community to publish the results of the discussions (Sullivan, 2008).

Another Peruvian institution promoting corporate governance is the Peruvian University of Applied Sciences (UPC), which began to organize a contest among 4,000 Peruvian firms to show the best examples of voluntary, private sector standards of corporate governance. The contest is designed to raise awareness about the importance of strong corporate governance practices and the benefits to democracy of creating a transparent business management framework.

Moreover, the Association of Companies Promoting the Capital Market (*Procapitales*) and Peruvian University of Applied Sciences (UPC) completed a pilot professional development program to improve corporate governance practices in Peru. The "Strategic Management and Corporate Governance" programme for 20 CEOs and general managers of 18 different medium and large sized companies placed emphasis on the benefits of transparent management. Due to the programme's success, at the end of 2005 *Procapitales* started to hold on a regular basis a professional development workshop series with greater emphasis on case studies.

The Peruvian legal framework is based on civil law. The relevant laws affecting corporate governance are the General Companies Law, 1997 (Ley General de Sociedades, LGS) and the Securities Market Law, 1996 (Ley del Mercado de Valores, LMV) and to a lesser extent the Securities Law, 2000 (Ley de Titulos Valores). The LGS establishes basic company forms and shareholders rights. The LMV regulates publicly offered securities, financial intermediaries and other market participants, securities exchanges, clearing settlement and mutual funds. Two regulatory bodies supervise the financial markets: the Superintendence of Banks and Insurance, which also oversees private pension funds; and the securities market regulator (National Supervisory Commission of Enterprises and Securities – Comisión Nacional Supervisora de Empresas y Valores (CONASEV). CONASEV is responsible for surveillance and control of compliance with the LMV and the law on Investment Funds and their managers. With respect to issuers, it defines and supervises disclosure and enforces certain aspects of the LGS on listed companies.

In 2002, a committee in which both the public and private sector participated drafted the Principles of Good Corporate Governance for Peruvian Corporations; this committee was under the leadership of CONASEV. The aim was to complement the legal framework with voluntary best practice provisions, and to set a national corporate governance benchmark against which listed companies could report their corporate governance practices. This code includes general recommendations on board organisation and functions, as well as the protection of minority rights, independent directors, board committees and disclosure of remunerations in the annual report. 2005 was the first year when listed companies were required to "comply or explain" their compliance with corporate governance standards in the annual reports. A new version of the code was issued in 2009.

3.6.5 Venezuela

The Centre for the Dissemination of Economic Knowledge (CEDICE) issued a survey to develop policy and also engaged in an outreach campaign to inform the public, which included the publication of a book entitled '*Street Vendors in Caracas'*. Also, the Centre for International Private Enterprise (CIPE) partnered with the Business Centre for Conciliation and Arbitration (CEDCA) to strengthen the rule of law and enforcement of the legal framework in Venezuela by promoting alternative dispute resolution (ADR). As a result of these efforts, an increasing number of private contracts in Venezuela now include a clause for ADR.

Venezuela, as well as Bolivia and Ecuador, rely on the Andean Corporate Governance Code (see section 3.7.1). The country has not yet developed its own code; however, there has always been regulation in force that to some extent refers to the corporate governance principles issued by the OECD. This regulation is included in: the Commercial Code; the Capital Market Law; the General Law of Banks and other Financial Institutions; regulations of the National Securities Exchange Commission (CNV); the Civil Code; the Civil Procedure Code; and the law of public registration and Notary Offices.

There are also governmental offices empowered to issue rules and oversee companies and their management. For example, CNV has, according to articles 2 and 9, paragraph 15 and 25 of the Securities Market Act (Ley de Mercado de Capitales), competence for the promotion, regulation, supervision and oversight of the stock market, including adoption of measures for the protection of investors and issuing rules for preventing and resolving conflicts of interest. In addition, the Commercial Code and the Stock Market Act provide formal requirements for calling and conducting shareholders meetings. Background information regarding matters included in the agenda should be available to investors in the company headquarters prior to, and during, the shareholder's meeting.

One of the activities at the shareholders' meeting is the appointment and removal of the directors. It is usual to include provisions in the company's bye-laws granting shareholders the right to appoint a certain number of members of the board of directors (Garay and González, 2008). Minority shareholders have the right to be represented at the board by a member of the company, according to the provisions of the Capital Market Law. Equally, a group representing 20% of a company's shareholders have the right to choose a proportional number of board members, although shareholders do not have cumulative voting rights to appoint board members. In addition, the Commercial Code establishes that the term of office for board members is a minimum of two years and they can be re-elected if the company statutes allow it. Similarly, the provision of independent board members was introduced by the Rules on Preferred Stock, March 2001; however the implementation of the rules is now subject to revision (Garay and González, 2008). Additionally, specific committees may be created within the board of directors by statutory provisions. Out of it, the by-laws can provide the creation of other special committees.

The members of the board have to be loyal to the organisation and conduct company business in a transparent manner. They must ensure full disclosure of conflicts of interest as well as material facts. Shareholders may use civil legal action to make effective the accountability of the board members for any breach of their duties. Shareholders can make claims at the CVN when there is a violation of the rules in the Stock Market Law of other rules of the matter. However, there are no legal provisions addressing standards of performance for the board members. Further, the General Meeting decides how much will be paid in remuneration to the board members.

Table 3.3 summarises key corporate governance initiative in the Latin American Andean countries. As mentioned above corporate governance in the region primarily relies in established laws and regulations; especially commercial law and newly issued market laws. Additionally, a common characteristic among the five countries is that the committees appointed to issue good principles are integrates by private and governmental entities. Only Colombia and Peru have issue their own corporate governance codes, while Bolivia, Ecuador and Venezuela continue using CAF's 2006 Andean Code.

Table 3.3 Summary of key corporate governance initiatives in the Andean countries

Countries	Corporate governance initiatives
Bolivia	**CAINCO** (1) – Ethical Business Standards **BBV** (2) – Internal regulations for Listed Companies **Government** – Law of Governance of Stock Companies **CAF**, 2006 – Andean Corporate Governance Code
Colombia	**Code of Commerce** – Article 203 and Law 43, Art. 13 – Annual audit threshold **Resolution 275**, 2001 – Institutional investors protection **Confecámaras Code**, 2001 – Targeted issuers **Law 964**, 2005 – Market Law **BVC and Superintendence of Finance**, 2007 – '*Country Code*' for listed Companies
Ecuador	**Government**, 1964 – Companies Law (amended, 1999) 2001 – Especial regulation restructuring debts in excess of fifty thousand dollars **CAF**, 2006 – Andean Corporate Governance Code
Peru	**Government** – 1997, General Company Law **Committee leaded by CONASEV** (3), 2002 – Principles of Good Corporate Governance for Peruvian Corporations (last updated 2009)
Venezuela	**CEDICE** (4) a guide for *Street vendors in Caracas* **CIPE & CEDCA** (5) – Alternative Dispute Reduction (ADR) **CNV** (6) – Securities Market Law **CAF**, 2006 – Andean Corporate Governance Code

This table summarises corporate governance initiatives in the five Andean countries.
(1) CAINCO – Chambers of Commerce and Industry of Santa Cruz
(2) BBV – Bolivian Stock Exchange
(3) CONASEV – National Supervisory Commission o Enterprises and Securities
(4) CEDICE – Centre for the Dissemination of Economic Knowledge
(5) CIPE – Centre for International Private Enterprises
CEDCA – Centre for Conciliation and Arbitration
(6) CNV – National Security Exchange Commission

3.7 Corporate governance research in Latin America

There has been considerable interest in recent years on the topic of corporate governance. Yet, much of the focus has been on corporate governance systems in developed countries; much less discussion of corporate governance in developing countries has taken place. However, in recent years researchers such as Cleassens and Fan (2002); Singh (2003); Allen, 2005; Chong *et al.*(2003); Kappler and Love (2002); Lubrano, 2002; Johnson, Boone and Breach (2000); Fernandez-Arias and Panizza (2000); Wanyama (2006);

Bondamakara (2010), among others, have produced research on corporate governance matters focusing in emerging markets, predominantly Asia, Africa, and Latin America.

To date research on Latin American corporate governance has been sparse and the main literature produced on the subject and related topics through the region and in each individual country have been of a descriptive nature. Nevertheless, the studies carried out till now offer an insight into the developments, enforcement, and compliance of corporate governance rules and principles through the region.

There has been some corporate governance research which is not specifically focused on Latin America, however such work provides support to the arguments of some Latin American researchers and many researchers from the around the world. This is the case of the studies carried out by La Porta *et al.* in 1997, 1998, 1999, 2000, and 2006 and the Kaufmann and Kraay study published in 2002. Focusing on different corporate governance topics, some regional papers have been published such as those by Capaul and Fremon, 2001; Capaul, 2003; Lefort and Walker, 2005; Chong and Lopez-de-Silanes, 2007; Garay and Gonzalez 2008 among others. At an individual country level there are several empirical studies from Brazil and Chile, there are also papers about Argentina, Colombia and Mexico, although the data used for the last three countries is relatively poor (Lefort, 2003).

The general issues found in the Latin American corporate governance literature are: cultural; social; conglomerates, financial market development, and political instability; ownership, identity and structure; institutional investors; board practices; and disclosure practices.

Corporate governance assessments in Latin America conclude that countries fail to enforce their laws, rules and regulations consistently and evenly. Litigation is expensive, uncertain, lengthy and burdensome. Private civil litigation is not a very common practice (Gil, 1999). Experiences where shareholders have attempted to hold directors or managers liable are atypical (Gil, 1999). If fraud has been committed, it is the government or the regulator that initiates procedures (Clark, 2004). These partly explain why practices such as self-dealing and insider trading are widespread and often go unpunished, although in theory, stiff penalties apply (Cruces and Kawamura, 2005). Latin

America has in recent years embarked on a notable process of political, economic and legal reforms. The administration of justice in particular has been singled out as inefficient, if not corrupt, inaccessible to most, and largely irrelevant to the needs of modern economies, and thus in need of fundamental change (Dodson, 2002). Of the five Andean countries only Colombia has passed corporate law reform in the last 30 years (Chong and Lopez-de-Silanes 2007). Evidence suggest that countries in the region have opted for changing securities laws, which has been proved easier as it represents less political conflict. The downfall of this approach is that it is less beneficial to SMEs as they have less possibility to access capital markets (Reyes, 2007).

Aside from macroeconomic considerations, a perception of poor enforcement is one of the most important factors contributing to lack of the development of local capital markets. Research from Millstein (2003) concludes that attracting investment requires protecting investors. Investors' protection requires both sound laws and their effective enforcement; the practice of enforcement is at least as important as the framework of legislation. Scholars such as La Porta *et al*. (2000) have found that countries that better enforce legal rights tend to have more developed financial markets regardless of their laws. It is suggested that there is a link between governance and compliance with the law; and that governance is not something that exists separately from the law and it is inappropriate to unhinge governance from the law (Reyes, 2007).

Capaul (2003) argues that weak corporate governance adversely affects the investment process and ultimately the private sector's ability to contribute to economic growth. In her study about corporate governance in Latin America, Capaul concludes that corporate governance only produces results if it is undertaken in conjunction with other structural measures that promote a conducive investment climate; for Capaul those structural measures are: competition, creditors rights, a flexible labour market, social safety and education opportunities.

Some studies consider the impact of corporate governance in attracting capital flows to the area. For example, Chong *et al.* (2003) argue that the implementation of good corporate governance through the region has reduced the volatility of the region's economy. The authors conclude that clear, established rules are critical for the well functioning of markets, and for Latin America in particular; the introduction of the Brady bond exchange mechanism following the debt crises of the1980s was a very influential factor in the adoption of corporate governance rules[26].

Furthermore, there are many other researchers supporting the benefits of adopting corporate governance standards. For example, La Porta *et al*. (1997, 1998, 1999, and 2000) found that countries that better enforce legal rights tend to have better developed financial markets regardless of their laws. Also, Chong and Lopez-de-Silanes (2007) conclude that appropriate company-level corporate governance is linked to a lower cost of capital, better company valuation, and performance and dividend payments across countries. With evidence from Mexican companies Chong and Lopez-de-Silanes (2006) reached the same conclusion; firms benefit from improving their corporate governance standards.

Corporate governance affects firm value, market liquidity and the organisation of industries, in a context of weak shareholders' protection. Cueto (2009) found that in an environment of low protection for minority shareholders, and large ownership concentration, market participants impose a discount value of firms in which voting rights of dominant shareholders exceed the cash-flow rights. However, investors prefer a dominant shareholder such as a corporation or a family group member rather than an institutional investor or a government agency. Such preference may obey to managerial expertise and efficiency and enhance access to markets. Results from Nenova's (2003) study suggest that the stock market discount is lower when other corporations and family groups assume monitoring roles similar to that of creditors.

The role of ownership structure as a corporate governance mechanism is another issue widely researched in emerging economies. A common denominator among Latin American publicly traded firms is the high degree of ownership concentration. Families

[26] Brady bonds are dollar-denominated bonds, issued typically by Latin American countries in the 1980s, named after US Treasury Secretary Nicholas Brady. Brady bonds were created in March 1989 in order to convert bonds issued by mostly Latin American countries into a variety of new bonds after many of those countries defaulted on their debt in the 1980's. At that time, the market for sovereign debt was small and illiquid, and the standardization of emerging-market debt facilitated risk spreading and trading. In exchange for commercial bank loans, the countries issued new bonds for the principal and, in some cases unpaid interest. Because Brady bonds were tradable and came with some guarantees, in some cases they were more valuable to the creditors than the original bonds.

are the main owners, even among the largest companies (OECD, 2003). A cross-country study of 49 countries by La Porta *et al.* (1998) measured the ownership of the three largest shareholders in the ten largest private non-financial firms (Table 3.4 provides a summary with information related to Latin American countries). In this study Mexico and Colombia had the second and third highest concentration of large shareholders of all countries that were surveyed (after Greece). Brazil ranks as number ten and Peru number 12 out of 49.

Table 3.4 Ownership concentration: Latin America

Place among the companies surveyed	Country	Ownership by three largest shareholders of the 10 largest private non-financial firms
1	Greece*	0.67
2	Mexico	0.64
3	**Colombia**	**0.63**
10	Brazil	0.57
12	**Peru**	**0.56**
17	Argentina	0.53
22	**Venezuela**	**0.51**
27	Chile	0.45
47	**Ecuador**	**No data**
49	Uruguay	No data

Source: adapted from La Porta et al., 1998. * include as reference

Often control is in the organisational form of a conglomerate or business group, defined as group of firms that are related to each other through ownership relations and controlled by a local family, a group of investors or by a foreign company. Data on Latin American ownership is either nonexistent or difficult to acquire. The OECD's (2003) White Paper on Corporate Governance systematically compares ownership structures of the countries. For example, in Colombia the majority of firms are owned by the largest five owners, the boards are reportedly small. In a survey about Venezuelan firms, 50% of the companies surveyed, majority ownership was in the hands of a single owner and most active firms (those that issue ADRs[27]) are mostly domestically owned.

[27] An American Depositary Receipt (ADR) is a negotiable certificate issued by a US bank representing a specified number of shares of anon-US Company that trade in the US financial market. ADR are denominated in US dollars, help to reduce administration and duty costs that would be levied on each transaction.

Additionally, empirical studies look at the effects of political instability investigating the relationship between instability and economic growth. For instance, Alesina *et al.* (1996), in a sample of 113 countries from 1950 to 1982, analyse the determinants of political instability together with per-capita GDP growth and find that instability has a large negative effect on growth rates. Also, Barro (1991) finds that instability negatively affects growth and investment and argues that property rights are not enforced in politically unstable environments. It is argued that political instability in Latin America may have been one of the major reasons why countries in the region have low levels of human capital (Maloney, 2002). However, Fedderke and Klitgaard (1998) argue that there is no empirical evidence to suggest that instability lowers human capital accumulation. Nevertheless, a direct effect on the accumulation of capital political instability can have negative effects on the policymaking environment and governance in general. Butkeiwicz and Yanikkaya (2005) argue that:

> "Governments in politically unstable and polarised countries are more likely to adopt inefficient or sub-optimal policies, including the maintenance of inefficient tax-systems, higher current government consumption, or the accumulation of larger external debts, which, in turn, adversely affect long-rung economic growth" (p. 631).

Chief executives who are politically vulnerable are less likely to undertake necessary, but unpopular economic reforms (Bekefi and Epstein, 2006). Similarly, Kaufman and Kraay (2002) argue that good governance has a positive effect on per-capita income growth, and that one of the components of governance is low political instability[28].

Another issue worthy of consideration is the importance of institutional investors as a source of finance. In 2000, pension funds, insurance companies, and mutual funds held about one-quarter of total central government debt in emerging markets. By 2005, the share of government debt held by these institutional investors had grown to almost one-third of all central government debt (IMF, 2006). Within Latin America, the country with the largest presence of institutional investors is Chile with Brazil someway behind followed by Colombia (Table 3.5).

[28] Kaufman and Kraay define governance as "the traditions and institutions by which the authority is exercised, the process by which governments are elected and monitored, and the capacity of the government to effectively formulate and implement sounds policies" (p. 176)

Although institutional investors are important for the functioning of a country's domestic government debt market, they are not a homogenous group with similar investment objectives. Pension funds and life insurance companies have a predictable funding flow and fairly predictable liabilities for long periods of time. As a consequence, they have a long-term planning horizon and look for assets that generate a stable flow of real income (Kiguel, 2006).

Table 3.5 Assets of Institutional Investors

(Percentage of GDP)

	Insurance Companies	Pension Funds	Mutual funds and investment companies	Total
Advanced economies	45.40	50.40	47.20	143.00
Argentina	4.60	12.00	1.00	17.60
Brazil	2.80	14.80	28.40	46.00
Chile	19.90	59.10	8.80	87.80
Colombia	**1.00**	**10.30**	**23.30**	**34.60**
Mexico	1.70	5.80	5.80	13.30
Peru	**2.20**	**11.00**	**n.d.**	**n.d**
Latin American Average	5.37	18.83	13.46	39.86

Source: Kiguel, (2006); for Brazil, Associação Brasileira Das Entidades Fechadas de Previdencia Complementar (ABRAPP), available at http://www.abrapp.br.

Note: All data are for 2003, with the exception of data for insurance companies, which refer to 2002. n.d. = no data.

Institutional investors are less important in emerging markets, but the growth of their assets has been very rapid, from 18 to 30% of GDP over the 1997 – 2003 periods. This rapid growth in the assets of Latin American institutional investors is mainly due to the creation of private pension funds that took place in Latin American countries in the mid-1990s (Kiguel, 2006). Institutional investors should be encouraged to vote and engage with companies, or require their agents through mandates to vote and engage. This may ensure that governance best practices are more consistently applied.

A system of corporate governance exists within a political, legal, historical, and cultural framework and many of the shortcomings in the actual governance practices derive from peculiar legal traditions (Grandori, A., 2004). Corporate scandals, involving a high incidence of improper activities of managers expropriating the resources of firms at the ultimate expense of shareholders have prompted awareness, re-examination and scrutiny of some corporate governance practices and also considerable interest in empirical research on the effectiveness of various corporate governance institutions and mechanisms. The next section looks at the principal current requirements and how they have evolved in order to provide the legal framework within which a board of directors operates. Also, an attempt to review extensively the literature and empirical research addressing the composition, role and effectiveness of board of directors is made.

3.8 The Board of Directors

In relation to a company or other formal organisation, a director is an officer who works for the company, charged with the conduct and management of its affairs (Blair, 1995). A director may be an inside director – a director who is also an officer or a promoter or both – or an outside, or independent, director. The directors collectively are referred to as a board of directors (Fama and Jensen, 1983). Normally, the board appoints one of its members to be the chair of the board of directors (Hart, 1995). Directors are elected or re-elected at the annual meeting usually by one-year terms, conditions are often imposed by law concerning the minimum size of the board, the minimum number of directors to be elected annually, and the maximum number of classes or maximum terms (Hart, 1995). Removal of directors during the course of their term may occur for reasons caused by the shareholders or by the board itself if there is a provision in the bylaws or articles of incorporation that confers such power to them (Kay and Silberston, 1995). The functions of a director involve a fiduciary duty such as the duty to act within the scope of their authority and to exercise due care on the performance of their corporate tasks (Hart, 1995). Directors are in control of other people's property and their powers are derived primarily from statute; boards of directors have been defined as the governing body of a company, elected by shareholders (Blair, 1995).

Investor confidence in public companies is essential to the functioning of the capital market in today's economic environment; this is one of the reasons, why corporate governance practices have been developed around the world to assist board of directors in the exercise of their responsibilities and to serve the best interest of their company and its varied stakeholders. These practices are intended to serve as a flexible framework within which boards may conduct their business (Kay and Silberston, 1995).

The board of directors must be aware of the importance of good corporate governance as a means of addressing the interests of the company's shareholders, employees, customers and community. The board should also recognise that ensuring that its company maintains good corporate governance practices should be an ongoing process (Keasey and Wright, 1993). Over the years, however, a complementary perspective sees board of directors in a systematic way, within a network of relations with the most influential actors of organisations' environment (Mintz, 2005; Grandori, 2004; Child and Rodrigues, 2003; Levine, 2003; Pfeffer and Salancik, 1978).

The primary responsibility of the board of directors is to protect shareholders' assets and ensure that they receive a sound return on their investment (Hart, 1995). In some European countries such as Germany, Holland and the Scandinavian countries, the directors feel that it is their primary responsibility to protect the employees of, a company first and the shareholders second. In these social and political climates, corporate profitability takes a back seat as the needs of workers are considered more important (Blair, 1995; Jones, 1995).

The board of directors is the highest governing authority within the management structure at any publicly traded company (Denis, 2001). It is the board's job to approve the company's strategy, select, evaluate, and approve appropriate compensation for the company's chief executive officer (CEO), evaluate the attractiveness of and pay dividends, recommend stock splits, oversee share repurchase programs, approve the company's financial statements, and recommend or strongly discourage acquisitions and mergers (Hermalin and Weisbach, 2000).

Other duties of the board may include policy-setting, decision-making, monitoring management's performance, or corporate control (Hermalin and Weisbach, 1998). The board of directors is normally selected by and responsible to the shareholders, but the statutes of many companies make it difficult for all but the largest shareholders to have any influence over the makeup of the board; normally individual shareholders are not offered a choice of board nominees among which to choose, but are merely asked to rubberstamp the nominees of the board (Hill, 1995). Another point to consider is that, frequently, members of the boards of directors are CEOs of other corporations, which some see as a conflict of interest (e. g. Perris *et al.,* 2003).

Directors must exercise their powers for a proper purpose. While in many instances an improper purpose is readily evident, such as directors looking to further their own interest, such breaches usually involve a breach of the director's duty to act in good faith. Greater difficulties arise where the director, while acting in good faith, is serving a purpose that is not regarded by the law as proper (Hutton, 1995).

Even though there are differences, boards share a common objective to safeguard and enhance stakeholders and especially shareholders' investment by effective oversight of management activities. A board's activities includes reviewing the development and execution of strategies, selecting and reviewing the performance and compensation of the chief executive and senior management, and ensuring transparency of communication and disclosure of financial and non-financial information, including establishing an effective audit process. In addition to undertaking all these activities a key challenge for the board is to create a sound culture that allows the principles of corporate governance to thrive (Carver, 1997).

The structure of boards varies by country and region of the world. For example, publicly traded firms in Europe may have two or three tiered boards. However, there is no need to adopt a system of two-tier boards to ensure desirable corporate governance. A single board may perform just as a well as two- or multi-tired board (Analytica, 1992). Different stock exchanges have different rules governing the powers of directors (Francis, 1997). These different regulatory regimes produce significant differences in the management discretion of firms, such as the requirement to have audit, remuneration and nomination committees, methods of electing or appointing directors, new share issues, establishing employees share plans, changing auditors, merging with another firm or changing the corporate contract or place of incorporation. The voting rights of shares and the percentage required to change control and capitalisation may also vary according to each firm, stock exchange, place of incorporation or national laws and regulations. Next are discussed some of the most commonly used board committees used by companies; the audit committee, the nomination, the remuneration committee, and corporate governance committee.

3.8.1 Board Committees

The Board appoints Committees to help carry out its duties. In particular, Board Committees work on key issues in greater detail than would be possible at full Board meetings. Each Committee reviews the results of its meetings with the full Board. Companies in compliance with the UK Combined Code, the OECD corporate governance principles will have an audit committee, a remuneration committee and a nomination committee. CAF's Andean Corporate Governance Code (ACGC) in addition to the above mentioned comities also recommends companies in the Andean region to have among other committees a corporate governance committee. Aside from that, companies will need to exercise their discretion to determine whether further board committees are appropriate (Cadbury, 1992).

3.8.1.1 Audit Committee

The primary function of the Audit Committee is to assist the Board of Directors in fulfilling its oversight responsibilities with respect to financial reports and other financial information provided by the company to its shareholders and others by carrying out duties such as ating as an independent and objective party to monitor the Company's financial reporting process and internal control system; oversee the integrity of the financial statements of the company; monitor the compliance by the Company with legal and regulatory financial requirements; evaluate the independence, qualifications and performance of the Company's independent Auditors; and oversee the performance of the Company's internal audit function, among others (Spira, 2002).

For US companies the audit committee should be composed of not less than three members of the Board. All members of the Committee shall have a working familiarity with basic finance and accounting practices, and at least one member shall meet the qualifications of an "audit committee financial expert," as defined in Item 401(h) of Regulation S-K promulgated by the SEC (SOX, 2002). The Andean Code (ACGC, 2006, Provision 40) estates the Audit committee should be integrated by minimum three 'external directors', maximum five; however is the board who ultimately should determined the number of directors in each committee. In the UK the Corporate Governance Code states:

> "The board should establish an audit committee of at least three, or in the case smaller companies' two, members, who should all be independent non-executive directors. The board should satisfy itself that at least one member of the audit committee has recent and relevant financial experience" (Para C.3.1).

3.8.1.2 Remuneration Committee

The primary purposes of the Remuneration Committee are to discharge the Board of Directors' responsibilities relating to the evaluation and compensation of the Corporation's Chief Executive Officer (the "CEO") and other senior executives, and to produce an annual report on executive compensation for inclusion in the Corporation's proxy statement in accordance with applicable rules and regulations. The Committee also makes recommendations to the Board regarding succession planning and development for senior executive positions as needed (Institute of Directors, 1999).

The Committee should have at least three members (ACGC, 2006). Committee members may be appointed by the Board from among its members and may be removed by the Board at any time. Each member of the Committee must satisfy such criteria of independence as the Board may establish and such additional regulatory or listing requirements as the Board may determine to be applicable or appropriate. Accordingly, each member must qualify as a "non-employee director" under rule 16b-3 of the Securities and Exchange Commission (the "SEC") and may not be part of a compensation committee within the meaning of SEC Regulation S-K and may not be eligible to participate in any of the compensation plans it administers (SOX, 2002). Members of the Committee should be suitably knowledgeable in matters pertaining to executive compensation.

The UK's Corporate Governance Code states that the board should establish a remuneration committee of at least three, or in the case of smaller companies two, members, who should all be independent non-executive directors' (Para B2.1). The remuneration committee should make recommendations to the board, within agreed terms of reference on the company's framework of executive remuneration and its cost and determine on specific remuneration packages for each of the executive directors, including pension rights and any compensation payments.

3.8.1.3 Nomination committee

The main task of the nomination committee is to propose candidates for election to the board of directors, including the chairman. The nomination committee must take into consideration the various rules on independence of the board in relation on the company, its senior management and major shareholders. In years in which election of auditors are held, the nomination committee may also propose candidates for election of auditors, base on the preparations carried out by the Audit Committee of the board (KPMG, 2002). The UK's Corporate Governance Code promotes a proper, thorough, and clear procedure for the appointment of new directors and states 'there should lead the process for board appointments and make recommendations to the board. A majority of the members of the nomination committee should be independent non-executive directors' (Para A.4.1). The chair of the committee may be the chair of the company or an independent non-executive director.

3.8.1.4 Other Committees

Board may appoint other committees, such as *Corporate Governance Committee* whose primary purposes is to monitor compliance with corporate governance standards; to identify individuals qualified to become Board members; to recommend to the Board director nominees for election at the annual meeting of shareholders or for election by the Board to fill open seats between annual meetings; to recommend to the Board committee appointments for directors; to review and make recommendations to the Board regarding non-employee director compensation; and to develop and recommend to the Board corporate governance guidelines applicable to the organisation (ACGC, 2006).

The Committee may have at least three members (ACGC, 2006). Committee members may be appointed by the Board from among its members and may be removed by the Board at any time. Each member of the Committee must satisfy such criteria of independence as the Board may establish and such additional regulatory or listing requirements as the Board may determine to be applicable or appropriate. Members of the Committee should be suitably knowledgeable in matters pertaining to corporate governance (ACGC, 2006).

The Finance Committee, which primary purpose is to review the organisation's financial policies, strategies and capital structure and take such action and make such reports and recommendations to the Board of Directors as it deems advisable (ACGC, 2006). The Committee may have at least three members. Committee members may be appointed by the Board from among its members and may be removed by the Board at any time. Members of the Committee should be suitably knowledgeable in matters pertaining to corporate finance. The actual number of members shall be determined from time to time by resolution of the Board (ACGC, 2006).

Some companies also establish a *Risk Committee* as part of their risk management framework to ensure adequate risk measurement and management of the company's exposure to risk. This committee is normally headed by a Chief Credit Officer who may appoint other officers or establish other sub-committees as required for effective risk management and governance, including risk measurement, risk monitoring, risk control or mitigation, and risk reporting. However, the directors are ultimately responsible for oversight the company's corporate risk governance process; the risk committee assists the board of directors in overseeing and reviewing information regarding the company's risk management and also may be in charge of the development of policies, procedures, and practices employed to manage the risks faced by the company (ACGC, 2006).

3.9 Other corporate governance features

The aim of this section is to provide an overview of issues such as internal controls, risk management, and corporate governance in SMEs, family-owned business and stated-owned enterprises.

3.9.1 Internal Control Systems and Risk Management

A widely accepted definition is that internal control systems are procedures or policies implemented by an organisation's board of directors, audit committee, management, and other personnel to provide reasonable assurance of the organisation achieving its objectives (Bishop, 1991). Moreover, the executive management is directly responsible for implementing the overall strategy and policies decided by the board, and for all activities of a company, including the operation of the internal control system. However, management at different levels may have different internal control responsibilities, depending on the characteristics of the company (Clarke and Chanlat, 2009). For example, the chief executive may have responsibility for all aspects of executive management, and is accountable to the board for the performance of the company and the implementation of the board strategies, policies, including policies on risk and control (COSO, 2004). The chief financial officer (CFO), who may also be a qualified accountant, may be involved in processes such as the establishment of a company's objectives and strategies, developing and preparing company budgets and plans, and analysing the performance of the whole company, not only the financial aspects, but also from the perspective of its operations and compliance. As such the CFO may be a central point of management control (Clarke, 2007).

Good systems of internal control may help a company to achieve its objectives of profitability and minimise loss of resources. Internal controls cannot, however, change a weak management system or provide absolute assurance as to the reliability of financial reporting (Clarke *et al*., 2008; Clarke, 2004).

3.9.2 Corporate Governance in SMEs and Family-owned businesses

Some of the participants at a forum on corporate governance in Latin America sponsored by the IMF agreed that corporate governance is relevant for smaller family business although it is more relevant for SMEs than for microenterprises. However, the benefits that corporate governance brings to a company's sustainability are not completed understood by all SMEs and more promotion of the issue is needed (Fomin, 2007). It is also argued that corporate governance is an important element in the success of SMEs and family-owned businesses. SMEs are fundamental for the economic growth of emerging economies as they are a major source of employment and contribute towards the gross domestic product (Banham, 2005). It is therefore very important that the corporate governance practices for SMEs are enhanced by assurance that appropriate monitoring occurs and all necessary procedures for the implementation of the standards are in place.

The definition of corporate governance originated in the large business environment and its application to Small and medium enterprises (SMEs) are less explored (Coulson-

Thomas, 2007). However, SMEs are engines of economic growth and play an important role in creating employment for rural and urban population in many nations (Banham, 2005). Family businesses vary from small and medium-sized companies to large conglomerates that operate in multiple industries and countries. Many family businesses have a very short life span beyond their founders' and the majority of family-owned firms do not survive the third generation of ownership (Treksten *et al.*, 2005). This is often the consequence of lack of preparation of the subsequent generations to handle the demands of a growing business. Family businesses may improve the odds of survival by setting the right governance structures in place and by starting the educational process of the subsequent generations as soon as possible. While most frequently attention is given to corporate governance in large business environment, the impact of changing roles of board members for organisations of all kinds should not be ignored (Treksten *et al.*, 2005). Esquivel (2007) has pointed out that governance should be related not only to corporations, but also as a family system of governance, "which takes into consideration the structures of ownership groups as well as the structure of the firms" (p 1). Others such as Dodero (2007) also agree with this view, stressing the need to create a corporate governance culture that considers a company's needs and the family structure. Equally, Gomez-Zorrilla (2007) states that creating a governance culture is very important, and that programs to train individuals in corporate governance issues throughout the region may help to strengthen the knowledge of governance and family organisation rules to help to generate demand for these issues. Gomez-Zorrilla also suggestes that one way to spread the understanding of corporate governance issues among SMEs, is to engage institutions such as banks, other financial institutions and business associations.

While organizational size and the overlap of management and ownership add complexity to governance in an SME context, SMEs are largely unfettered in their decision-making role; the owner/manager has the freedom to take decisions which is important in the rapidly changing environment of today. However, without input from a well structured board, SMEs may not always see strategic opportunities (Brunninge *et al.*, 2007). The capacity for entrepreneurial action is an advantage that SMEs do not want to sacrifice to improve corporate governance (Coulson-Thomas, 2007) and especially since corporate governance in large organisations is challenged by the need to add capacity to innovate by their managers. SMEs already enjoy the motivational aspects that large businesses are trying to emulate (Gomez-Zorrilla, 2007).

The accountability and empowerment of management are aspects of corporate governance embedded in the organisation of many SMEs, particularly those where the owner is involved in the day to day operations. Conversely the responsibility to a broader range of stakeholders can become a challenge to SMEs as owners/managers/directors are involved in their activities. Equally, consideration of the interests of employees, clients and suppliers, as well as the broader community when making decisions, has not always been the situation in SMEs; consequently, the potential benefits of strategic direction and growth have not always been realised (Coulson-Thomas, 2007). The application of the broader definition of corporate governance to SMEs, in particular to the responsibility to a broader range of stakeholders, has much to offer to the viability and growth of SMEs, especially the relationship with providers of finance. Equally, SMEs face significant challenges in relation to the incorporation of responsibilities to an expanded group of stakeholders. However, SMEs have emerged as a dominant economic force and there are significant potential benefits available by successfully addressing specific aspects of corporate governance (Coulson-Thomas, 2007; Brunninge *et al*., 2007).

3.9.3 Corporate Governance in State-Owned Enterprises

In many counties, State-Owned Enterprises (SOEs) still represent a substantial part of GDP, employment and market capitalization (Gómez-Ibáñez, 2006). Moreover, SOEs are often prevalent in utilities and infrastructure industries, such as energy, transport and telecommunications, whose performance is of great importance to broad segments of the population and to other parts of the business sector (Dewan, 2006). As a result, governance of SOEs may be important to ensure their positive contribution to a country's overall economic efficiency and competitiveness. It is also argued that good governance of State-Owned Enterprises is an important prerequisite for economically effective privatisation, since it will make the enterprises more attractive to prospective buyers and enhance their valuation (Chong and Lopez-de-Silanes, 2003; Gómez-Ibáñez, 2006). There is also the case of countries that are reforming the way in which they organise and manage their state-owned enterprises and have decided that the adoption of corporate standards is a good route (Estrin, 1998; OECD, 2004, 2005, 2007; UNDP, 2007). Additionally, it has been noted that corporate forms can provide greater political insulation for SOEs and transfer greater autonomy on their boards (Wong, 2004).

Because of their special nature, SOEs may have a large list of potential stakeholders beyond employees, creditors and other SOEs. Mandates to particular consumer communities, to encourage environmental protection, or to address social injustice are very much the norm. However, SOEs do not necessarily do a better job in meeting these commitments. For example, there are a number of reported cases where SOEs pollute more heavily than comparable private sector enterprises (World Bank, 1991). Shleifer and Vishny (1997) noted that state enterprises, managed by powerful government bureaucrats pursuing political agendas, fail on two counts: they do not achieve social objectives and their inefficiencies are expensive to the public. To be effective SOE obligations should be made as explicit as possible, understood by all parties, and implemented in such a way as to allow the board adequate autonomy in directing the enterprise. They should also be realistic: a SOE that is asked to do everything may find it difficult to accomplish anything (Dewan, 2006; Chong and Lopez-de-Silanes, 2003).

3.10 Linking Corporate Governance and Corporate Social Responsibility (CSR)

Today companies operate in an environment of intense media, investor, regulator and public scrutiny. The financial scandals of recent years have created a significantly more constrained regulatory environment. At the same time, increasing public and stakeholder concern about social and environmental impacts of business practices is forcing companies to come to terms with a much broader set of interests and explanations. These concerns have motivated a debate regarding the degree and nature of convergence between corporate governance and corporate social responsibility (Kolk, 2008; Mitchell, 2007; Barnett and Salomon, 2006; Zedek, 2006; Deakin, 2005, Orlitzky *et al*., 2003).

It is expected that CSR will function as a built-in, self-regulating mechanism whereby business would monitor and ensure its adherence to law, ethical standards, and international norms (Matten and Moon, 2004). Businesses should embrace responsibility for the impact of their activities on the environment, consumers, employees, communities, all other members of the public, and any other stakeholder. Furthermore, business should promote the public interest by encouraging community growth and development, and voluntarily eliminating practices that harm the public, regardless of legality (Orlitzky *et al*., 2003). Essentially, CSR includes the public interest into corporate decision-making, and honours the 'triple bottom' line: People, Planet and Profit (Gray *et al*., 1987; Brown *et al*., 2006).

The practice of CSR is subject to much debate and criticism. Proponents argue that there is a strong business case for CSR, in that corporations benefit in multiple ways by operating with a perspective broader and longer than their own immediate, short-term profits (Carroll, 1999). Critics argue that CSR distracts from the fundamental economic role of businesses; others argue that it is not more than window-dressing; others yet argue that it is attempt to pre-empt the role of governments as a watchdog over powerful multinational corporations (Whetten *et al*., 2002; Zambon *et. al*., 2005). Corporate Social responsibility has been redefined throughout the years. However, it essentially an aid to an organisation's mission as well as a guide to what the company stand for and will uphold to its customers (Snider *et al*., 2003; Zedek, 2006).

Increasingly companies see CSR as an essential component of good corporate governance, from a point of view of risk management, transparency and sustainable long-term value creation. This is an expanded notion of corporate governance and one that goes much further than the compliance orientation given in corporate governance codes (Zedek, 2006). Equally, for some, corporate governance is becoming more broadly defined to include ethical considerations, a result of a number of significant governance oversight failures. In this regard good governance is primarily about values rather than rules; corporate governance is going beyond the traditional core governance functions to incorporate the value dimension. Part of the governance process is determining what kind of corporate citizen the company seeks to be; CSR is taken as a part of this exercise (Smith, 2003; Melé, 2008).

3.11 Summary

Corporate scandals involving improper activities of managers expropriating the resources of organisations at the expense of stakeholders has prompted an intense re-examination and scrutiny of existing corporate governance practices and has generated considerable interest in empirical research on the effectiveness of various corporate governance institutions and mechanisms. This chapter is an attempt to provide a survey on the fast-growing theoretical and empirical literature on corporate governance issues, providing some light on the major points of consensus and dissent among researchers regarding the nature and effects of the conflicts of interest between managers/owners and other stakeholders, and on the effectiveness of the set of available external and internal disciplining mechanisms.

The literature examines the efficacy of alternative structures of ownership and the boards of directors and various other governance structures. On the one hand there is increasing evidence of the failure of certain governance structures to control and motivate managers to increase company's performance. On the other side the empirical evidence to date is not conclusive on giving the most favourable governance structure or sufficiently complete to include all major determinants of good corporate governance.

This chapter also includes discussions about and the context of different legal frameworks and corporate governance codes, differences between large companies and SMEs, governance in new environments (companies and economies) versus stable environments, in state-owned enterprises and the changing environment affecting corporate social responsibility.

Having introduced the research, defined the research questions, looked at the background of the Andean region, and presented the literature review, the next chapter is devoted to establishing the theoretical framework within which the study took place.

CHAPTER FOUR

Theoretical Framework

CHAPTER FOUR

Theoretical framework

Introduction

This chapter outlines the selected theoretical framework based on stakeholder theory, accountability theory and legitimacy theory as foundations for exploring and expanding the developments in the implementation of corporate governance principles in the Latin American Andean region.

The chapter is divided in six main sections followed by a summary. The first section focuses on the definition and role of theory. Sections two, three, and four discuss stakeholder, accountability and legitimacy approaches respectively, together with their limitations, and attempts to ascertain their suitability as a theoretical framework for the present study. Section five discuses the combinations of the three theories; section six outlines why this approach is considered to be the appropriate lens through which the research presented in this thesis is designed and interpreted; and section seven summarises the chapter.

4.1 Definition of theory

There are many theories that can be used in a thesis and there are different explanations of what represents a theory. According to Chambers (1972):

> "A theory is a well ordered set of statements about classes of things and classes of events which are in some way connected in our experience of them" (p. 138).

Also, the American Heritage Dictionary of English Language (2009) includes the following definition of theory:

> "A set of statements or principles devised to explain a group of facts or phenomena, especially one that has been repeatedly tested or widely accepted and can be used to make predictions about natural phenomena".

According to these definitions the main objective of a theory is to provide a coherent set of rationally derived principles that serve as a frame of reference for evaluating and developing practice and discussing related concepts and designing a framework around the structure of these concepts and how they are put together. A theoretical framework interrelate the theories involved in the research questions. Problems cannot be articulated except within a conceptual system. Researchers are unable to investigate problems from all perspectives at the same time; this is why a logical structure or theoretical framework needs to be constructed. Through this, researchers construct a perspective or a set of lenses which allow them to view the problems (Eisenhardt, 1989).

Selecting the theories for a study is important to consider, especially when economic transactions are influenced by cultural concerns, business related alliances, trade, vocational, family, social and political networks that are important in Latin America and elsewhere (Hollingsworth and Lindberg 1985; Analytica, 1992; Hollingsworth, Schmitter and Streeck, 1994; Hollingsworth and Boyer, 1997).

The theoretical framework for this study focuses on the theories related to the formal structure of corporate governance including roles and procedures. Most theories of governance come under the perspective of efficiency (Jensen, 2001; Aguilera and Jackson, 2003); where the function of a governance mechanism or, more generally, a governance system is to contribute to the efficiency of the firm. Thus, mechanisms such as the board of directors, or allowing hostile takeover bids ensures a better discipline of managers, and contributes to the increased efficiency of a company by creating more value. However, different theories focus on particular interpretations of efficiency, emphasising that organisations are more than means to produce goods and services; they are also social and cultural systems. As such, these theories argue that those organisations and their stakeholders not only seek to compete for resources or economic rewards but rather seek legitimacy (Suchman, 1995) and accountability. In an effort to provide a more solid foundation for accountability and legitimacy this study sets out a comprehensive model, particularly focusing on accountability and legitimacy as stakeholder characteristics that directly affect resource flows to organisations, rather than resting on the traditional theories of governance such as agency or political theory.

This study employs a theoretical framework of stakeholder theory together with accountability and legitimacy. The aim of this study is to deduce, from the examination of voluntary and mandatory corporate governance polices, the effects of these policies on company accountability and legitimacy dynamics to stakeholders. The research and analysis are undertaken from a perspective of an organisation concerned with strategic actions involving the necessary conditions of regulatory and voluntary compliance as components of organisation legitimacy. This chapter points out the generally-agreed assumptions behind the theories, and indicates why these propositions are more important than others and which can be verified empirically. An expanded discussion of accountability, legitimacy and stakeholder theory follows.

4.2 Stakeholder theory

Stakeholder theory identifies and models the groups that are stakeholders of an organisation, and describes and recommends methods by which management can give due regard to the interests of those groups (Freeman 1984). A corporate stakeholder is a party who affects, or can be affected by, a company's actions. The stakeholder concept was developed and championed by Edward Freeman in the 1980s; it has gained acceptance in business practice and in theorising relating to strategic management, corporate governance and business purposes.

Stakeholder theory provides a suitable theoretical framework to analyse the relationship between business and society from a suitable development viewpoint, since it emphasises values such as participation, inclusion and mutual dependence (Wheeler *et al*., 2003). Studies suggest that strengthened stakeholder relationships can result in significant competitive advantages in the form of trust, reputation and innovation (Freeman and Phillips, 2002; Rodriguez *et al*., 2002; Godfrey, 2005). However, stakeholder theory can only explain how to identify and engage with stakeholders for specific collaboration. In order to align stakeholders' interests and create long-term value, organisations have to develop, apply and maintain the necessary management competences and capabilities to deal with stakeholder concerns over time.

Corporate governance focus on stakeholders was associated in the early 1990s with progressive corporate law views (Mitchell, 1995), and more generally, with communitarian positions (Etzione, 1996). In defining stakeholder theory, Clarkson (1995) states that a company:

> "…is a system of stakeholders operating within the larger system of the host society that provides the necessary legal and market infrastructure for the firm's activities. The purpose of the firm is to create wealth or value for its stakeholders by converting their stakes into goods and services" (p. 322).

This view is supported by Blair (1995) who suggests that the goal of directors and management should be maximising total wealth creation by the firm. The key to achieving this is to enhance the voice of, and provide ownership-like incentives to, those participants in the firm who contribute or control the operations of a company and bring it into line in the interests of all stakeholders. Consistent with Blair's view, Porter (1992) recommends that US policy makers should 'encourage long-term employee ownership' and promote board representation by significant customers, suppliers, financial advisers, employees, and community representatives. Porter also argues that companies should aim for long-term owners and give them a direct voice in governance.

Additionally, there is wide agreement that the corporate governance framework should include mechanisms that encourage the participation of stakeholders in the long-term future of the business. Further, stakeholders should have access to relevant information to be able to have an effective involvement in the company affairs (Deegan and Gordon, 1996). Equally, Hill and Jones (1992) have built on the work of Jensen and Meckling (1976) to recognise both the implicit and explicit contractual relationships in a firm to develop 'Stakeholder–Agency Theory'. The interdependence between a firm and its strategic stakeholders is recognised by the American Law Institute (1992) which has the view that modern companies rely on different groups with whom they are associated such as employees, customers, suppliers, and members of the community in which companies operate. Stakeholder theory, thus, suggests that overlooking these other stakeholders is unwise or imprudent and/or ethically unjustified. To this extent, stakeholder theory participates in a larger debate about business ethics (Donaldson and Preston, 1995; Phillips, 2003).

The activities of business organisations impact a wide range of stakeholders, and interactions between a business and some of its stakeholders are governed by legal contracts or statutory regulation (Gray *et al.*, 1996). Other interactions are likely to be subjected to informal social contracts where stakeholders are affected by company operations (Donaldson, 1989; Gray *et al*., 1996). Under such contracts, whether formal or social, companies are liable to the stakeholders affected to take certain actions. As companies may be subjected to conflicting demands they might face a series of mutually exclusive social, environmental, economic and ethical responsibilities (Gray *et al*., 1996). These conditions make it necessary for companies to adopt mechanisms to decide which contractual responsibilities they will attend to, and which they will ignore.

However, decision-making with respect to stakeholder relationships is not easy. Tradeoffs between company interests and stakeholders' interests as well as those between or among the interests of different stakeholders involve the allocation of benefits and burdens among human beings and, hence, moral questions. Hendry (2004) explains this situation by arguing that managers face two sets of conflicting alternatives about how to act, one is to follow traditional morality and execute their obligations and duties with honesty and respect, fairness and equity, care and assistance; or follow the market morality and act in their own self-interest.

Nevertheless, self-interest is often related to the exercise of power, which can be exploited for both managers and stakeholders. Willer *et al*. (1997) argue that stakeholders with power have the potential to increase favourable outcomes for themselves, while self-interested organisations with power over stakeholders may apply it with impunity. But when these organisations are confronted with stakeholder power, which may originate from resources that are, for example, concentrated or tightly controlled or are essential to operational performance, organisations have no choice but to deal with their stakeholders demands. There is also the case where companies respond to stakeholders to enhance their legitimacy, which some scholars consider in essence a moral phenomenon (Suchman, 1995). Legitimacy is discussed later.

Companies will normally fulfil those responsibilities that originate from legal contracts or regulations; otherwise they will face certain legally defined penalties (Gray *et al*., 1996). However, there may be stakeholder groups, indirectly affected by companies' actions, but are not recognised as stakeholders; their informal rights may be not recognised or may be left unaddressed. Companies may tend to prioritise the interests of those stakeholders that exert the greatest economic power and influence over their businesses (Gray *et al*., 1996; Adams, 2002).

A stakeholder approach can assist managers by promoting an analysis of how their company fits into its environment, how its standard operating procedures affect stakeholders within the company. Freeman (1984) suggests, for example, that each company should fill in a 'generic stakeholder map' with specific stakeholders. General categories such as owners, financial community, activist groups, suppliers, government, political groups, customers, unions, employees, trade associations, and competitors would be included using this map and managers would make decisions by considering the impact of each choice on specific stakeholder groups. As the company changes over time, and as the issues change, the specific stakeholder map will vary.

Stakeholder analysis generates knowledge about individuals and organisations through a process of study and investigation. It is expected that a stakeholder analysis will provide the tools to uncover the perceptions and concerns of all those with a stake in an organisation's behaviour. Stakeholder theory was chosen to give focus to the discussion within this study; it is used to determine the legitimate interest and rights of various stakeholders, and utilise these as a way of determining corporate and managerial duties toward stakeholders.

4.3 Accountability theory

Accountability acknowledges that social actors take responsibility for their actions and decisions, and the policies of their organisations including the administration and governance encompassing the obligation to report, explain and be answerable for any resulting consequences (Gray, 2002).

Organisations normally respond to the need for accountability to their stakeholders by creating mechanisms such as formal reporting relationships, performance evaluations, employment contracts, performance monitoring, reward systems including compensation, disciplinary procedures, and personnel manuals. In addition to these formal mechanisms, organisations support several informal sources of accountability. These include group norms, corporate cultural norms, loyalty to an individual's superior and colleagues, and also respect for customers (Milne and Patten, 2002).

Definitions of accountability tend to turn around two explicit subjects. One subject concerns the context of whom and what is involved in a given situation and the second subject involves the notion of an evaluation and judgment activity in some form (Adams, 2004). Accountability is not a universal concept. In fact, this word is known only in English, with all the connotations it entails, prevails primarily in English-speaking countries. There is not a Spanish word for accountability, the term is broad and imprecise, "accountability" ("*rendición de cuentas*") is used as a synonym of obligation to respond to something, responsibility and control. It refers to the invocation to good governance, transparency and legitimacy of public power party. It is central to the discussions on fraud and scandal in the public and private sectors (Cutt and Murray, 2000). Rosenn (1993) notes that many English juridical terms, developed for the Common Law legal system do not, have Spanish equivalents because some concepts do not exist within the Civil Law tradition. Reaching a sound analysis of accountability and corporate governance therefore centres on having a proper understanding of the concept of accountability.

Thus, accountability involves an actor or agent in a social context who potentially is subject to observation and evaluation by some audience, including one's self. There are also standards, or expectations against which the agent's behaviour is compared, which could result in the belief on the part of the agent that he or she may need to answer for, justify or defend decisions or behaviours. In addition, there are possible outcomes for the agent, i.e. sanctions, rewards, or punishments that can be implicit or explicit. Further, the focus is in the conduct of the behaviour of the agent, and arguably the agent is able to control his or her own behaviour. Milne and Patten (2002) argue that the purpose of the accountability mechanisms put in place in organisations is to deal with agents in control of their own behaviour.

Accountability constitutes a part of a large repertoire of governance norms. The types of power covered by norms of governance vary greatly. They range from long-term positions of power held by the state or state organs, to holding a public office. This continuum goes on to holding an executive office in a corporation and to situations that allow for opportunistic behaviour (Boatright, 1999). These situations occur, for instance, during sequential performance of contractual obligations, or when performance is unobservable or unverifiable and is the core feature of the agency relationship (Demirag and Tylecote, 1992).

The obligations owed by a party who is accountable may vary considerably with individual circumstances, even within the same country (Blagescu, *et. al*., 2005). Although similar in principle, the accountability of elected politicians differs from that of civil servants. These types of accountability differ from the accountability of corporate executives, and so forth (Zedek, 2006).

There are several models of accountability which can be used to understand the nature of accountability relationships. For example Vangel and Huxham (2003) suggest a model used in government circles of representative accountability, which emphasises the obligation of representatives to their constituencies. This model is often applied to public sector actors who are expected to be democratically accountable to voters or their elected representatives. A second model, which is widely used in the business world, is principal-agent accountability, which focuses on motivating agents to achieve the goals of their principals. From this perspective, the major challenge is to design incentives that will keep the agents faithful to their principals' interest. Principal-agent accountability emphasises the fiduciary responsibilities of agents and economic and legal incentives to encourage agents to act for principals (Child and Rodrigues, 2003). Violations of contract accountabilities can be enforced through the legal system with legal or financial sanctions. A third model focuses on creating mutual accountability to bring together members through shared values, aspirations and unite to responsibility for achieving them. Sanctions for violating expectations are social and rational, so relationships and trust become essential elements in the construction and implementation of share analysis and plans. Mutually accountable relationships require developing a shared understanding, respect, trust, and mutual influence (Child and Rodrigues, 2004). They may require more time and energy to create and they are more difficult to maintain across large number of participants than agency contracts or representative mandates (Vangel and Huxham, 2003).

Accountability relations involve specific relationships and expectations, which are more subject to direct influence by organisations than legitimacy perceptions. Blagescu (2002) analyse the accountabilities of intergovernmental organisations, multinational corporations and cross-border civil associations and generates some core accountability mechanisms (for example, clarifying rules, roles and responsibilities) which are the starting points for accountability management strategies with both internal and external stakeholders.

The concept of accountability has been defined in many ways, not all of them compatible or mutually reinforcing (Koppell, 2005). This research focuses on accountability as a responsibility to answer for particular performance expectations to particular stakeholders (Fry, 1995).

4.4 Legitimacy theory

Legitimacy can be defined as the aspect of governance that validates institutional decisions as emanating from the right processes. The primary source of legitimacy lies in the involvement of those impacted by a decision in the decision-making process leading to it. The concept of legitimacy refers to perceptions by key stakeholders that the existence, activities and impacts of organisations are justifiable and appropriate in terms of social values. For example, according to Lindblom (1993):

> "Legitimacy is a condition or a status which exists when an entity's value system is congruent with the value system of the larger social system of which the entity is a part. When a disparity, actual or potential, exists between the two value systems, there is a threat to the entity's legitimacy". (p. 2)

Legitimacy is lost or gained in the eyes of stakeholders, and different stakeholders may differ considerably in their standards and perceptions of the legitimacy of a particular organisation. Suchman (1995) defines legitimacy as:

> "A generalised perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions" (p. 574).

Legitimacy is a generalised status rather than specific to particular instances (Deegan, 2002). While organisational legitimacy may be maintained in spite of isolated breaches of normative expectations, it cannot be sustained without a history of regular observance of norms and values. Individuals evaluate an organisation based on their perceptions or assumptions about similarities between their values and an organisation's values. This implies that an organisation may deviate from expectations and still maintain legitimacy if the relevant audience are not aware of the deviation. Additionally, the individuals' values, norms, and beliefs against which organisations' actions are measured are the result of the social constructions of these norms by, and within, the referent audience, and between different audiences (Deegan and Unerman, 2006).

The need to align management's values with social values was identified by both Deegan (2002) and O'Donovan (2002). The annual report is often used as a tool by management to signal its reaction to the concerns of particular stakeholders. The underlying assumption is of a social contract between society and organisations, supported on the conception that companies only exist because society has provided them with the means to do so, legitimising their operations, and therefore, they have obligations to society.

Corporations may be concerned about their legitimacy as institutions that seek to play credible and accepted roles in society. Institutional legitimacy can be grounded on regulatory, normative or cognitive bases (Deegan and Rankin, 1996). Corporations may gain regulatory legitimacy by conforming to rules and regulations, such as meeting state standards and procedures for organisational reporting. They can build normative legitimacy by exemplifying values and moral obligations, such as economic expectations providing needed finance for specific projects, supporting researchers, or delivering safe goods and services. Corporations may also gain cognitive legitimacy by aligning their activities with shared meanings and definitions that define 'the way things are'. Many civil society organisations recruit well-known trustees and follow the reporting and system of government of well-regarded agencies to enhance their own credibility. From this perspective, organisations might emphasize different bases for their institutional legitimacy, depending on the extent to which their fields of operation have well-defined rules and regulations, shared values and moral perspectives, or widely-held meanings and explanations for how the world works (Deegan, 2002).

In the same way, organisational legitimacy can be based on a regulatory normative or cognitive basis (Scott, 1990). Legal legitimacy is derived from compliance with legal and regulatory requirements, such as meeting company law provisions or adopting corporate governance principles. Moral legitimacy is related to moral or ethical values and norms, also to a view of a better world (Lindblom, 1994).

An organisation's survival can be threatened if society perceives that it has breached its social contract. As a result, entities may be controlled to some extent by community concerns and values (Brown and Deegan 1998). Values change over time, and reporting entities need to respond to that. Successful legitimation depends on entities convincing society that a congruency of actions and values exists. For example, management may react to public concern over corporate actions by increasing the level of corporate disclosures in their annual reports if they perceive that their legitimacy has been threatened by public concern (Brown and Deegan 1998).

Thus, managers may look toward relevant audiences and work on securing their legitimacy (Suchman, 1995). Disclosures in corporate reports are one way of illustrating organisational responsibilities. By producing reports that communicate positive organisational efforts, managers not only defend sound practices, but may also cultivate moral legitimacy by creating good-faith efforts to be socially responsible.

The main objective of this study is to provide evidence of the key determinants that influence companies' decision to implement corporate governance in their organisations. Legitimacy theory, accountability theory and stakeholder theory are is used to focus this research; to be used as a lens to find out and explain the factors that influence management's decisions on the adoption of corporate governance standards.

4.5 Interaction of accountability, stakeholder and legitimacy theory

Legitimacy and accountability are related and influence each other. Companies' legitimacy can be enhanced by clear lines of accountability to appropriate stakeholders, and accountability can be clarified and improved through attention to a company's bases for legitimacy. Businesses are primarily accountable to their shareholders. However, diverse stakeholders make conflicting accountability demands. Dealing with different accountability demands may be very difficult, and where stakeholders have different, or contradictory interests, being fully accountable to all of them is unfeasible. Thus legitimacy and accountability may constitute a challenging problem for companies (Unerman and O'Dwyer, 2006).

Legitimacy reflects generalised perceptions of an organisation by actors in their environment. These perceptions may be influenced by management strategies that align organisational goals and activities to fit societal expectations or reconstruct societal expectations to fit the organisation. Accountabilities describe focused expectations that are held by specific organisational stakeholders. It is suggested that improving accountability to appropriate stakeholders can strengthen organisations' legitimacy by clarifying the interest they serve and how abuses can be controlled (Blagescu, 2002; Clark, 2005).

While the literature on governance has grown rapidly in recent years, little progress has been made on either explaining changes in governance patterns or measuring effectiveness. While some work has been done on important elements relating to these topics, there is a need for a simple conceptual model to link them together more clearly. This research looks at such a model, building on earlier work relating to important concepts such as accountability and legitimacy. Accountability refers to the "condition in which individuals who exercise power are constrained by external means and internal norms" (Koppell, 2005), while legitimacy is viewed as having valid, socially acceptable, and trustworthy authority. Governance, accountability and legitimacy can be linked in a series of interconnected relationships that feed back to one another. In this way, changes or emergent weaknesses in the governance system result in a loss of the system's accountability to a particular audience. This loss of accountability, if prolonged and serious, then results in a loss of the system's legitimacy among that audience, which consequently seeks whether to change the governance system and its level of accountability, or construct an alternate system altogether (Grant and Keohane, 2005).

Companies can be affected by stakeholders, who in efforts to exert control over the company can indicate how acceptable or unacceptable the company's actions have been (Rao, 1994). When stakeholders consider that some of a company's actions are unacceptable they can react in ways that can be a threat to that company's stability. It is argued that companies' reaction to this specific situation depends on the level of stakeholders' activities and the extent to which the threat focuses on issues that are seen as core to the company structure (Devers, Dewitt and Belsito, 2005). Friedman and Miles (2002) make a distinction between stakeholders whose goals are compatible and stakeholders whose goals are incompatible with those of the organisation. Freeman (1984) defines a stakeholder as:

> "…are any group or individual who can affect or is affected by the achievement of the organisation's objectives" (p. 46).

Other characteristics of stakeholders suggested by the literature are their status and familiarity, their influence and their interpretation of events and responses to those events (Ginzel, Kramer, and Sutton, 1993); some stakeholders can be more influential than others. Harrison and St John (1996) and Clarkson (1995) have a similar view and identify stakeholder influence as a function of the company strategy and contractual relationships, respectively. The degree of this influence, however, is determined by the relative importance of these stakeholders.

Mitchell *et al*. (1997) provide a framework of stakeholder influence and activism that includes important arguments from the stakeholder and impression management literature[29]. Their framework advocates that stakeholders will be influential mainly when they are powerful, legitimate and make important claims on the organisation.

4.7 Summary

Corporate governance is a multi-faceted subject. An important part of corporate governance deals with accountability, fiduciary duty, disclosure to shareholders and others, and mechanisms of auditing and control. In this sense, corporate players should comply with codes to the overall good of all constituents. Another important focus is economic efficiency, both within the company, such as the best practice guidelines, as well as externally, such as national institutional frameworks. In this economic view, the corporate governance system should act not only in the interest of shareholders, but also all the other stakeholders.

[29] Impression management theory refers to ways in which people in a company or other related environment present an image of themselves; generally this is done in way that lead others to evaluate the individual positively.

The main objective of this study is to explore the efforts of the Andean Development Corporation (CAF) and other organisations to promote the implementation of corporate governance practices by companies through the Latin American Andean region and to identify the reasons why Andean companies decide to implement corporate governance principles in their organisations. It is important given the aims to carefully consider the theoretical issues relating to the adoption of corporate governance principles by organisations and select a foundation for the work that fits the context and purposes of the research appropriately. For this reason the research has adopted a theoretical approach which extends accountability and legitimacy to stakeholders. The study assumes that companies have to account for the legality and appropriateness of their activities taking into account the effects of those activities in all company's stakeholders. The interaction between theory and empirics provides an advantage in facilitating not only understanding the empirical observation of the phenomenon under investigation, but also possible developments to the theoretical core (Broadbent and Laughlin, 1995). This claim has been exemplified through a review of a range of studies that have adopted such a theoretical framework through undertaking empirical research in several areas.

CHAPTER FIVE

Methodology and Research Methods

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Methodology and Research Methods

Introduction

This chapter describes the ontological, epistemological and methodological principles that are organised into four paradigms proposed by Burrell and Morgan (1979); those paradigms constitute the domain within which research is conducted. A section describing the research design, the method of research and methods of data collection used in the thesis are also included in this chapter. Especial emphasis is given to the use of case studies, defining them, and justifying their appropriateness in terms of the type of questions posed. In addition, the chapter considers some of the limitations of the research methods chosen and explains how they may be mitigated in this study. The final section provides a brief summary of the chapter.

5.1 Methodological issues and assumptions

Methodology is a research strategy that translates ontological and epistemological principles into guidelines that structure the research process. The two major and most popular forms of research are qualitative and quantitative research. But clearly they can (and often are) combined. In particular, assumptions that the researcher holds regarding the area under discussion (ontology), will affect the way in which the knowledge about the subject can be obtained (epistemology), and this in turn can affect the way in which the research will be conducted (methodology) (Hopper *et al.,* 1987). Methods, on the other hand, are instruments employed in the collection and analysis of data.

The selection of the most appropriate research methodology is dependent on the nature of the phenomenon being researched (Tomkins and Groves, 1983). The ontological assumptions are concerned with the essence of the corporate governance phenomenon, and involve nominalism-realism differences (Laughlin, 2004). The dichotomy is whether the social world is or is not external to the individual; the normalist-researcher makes sense out of unstructured matters. The realist, however, sees the real world as separate and independent of the individual researcher.

In addition to the ontological-epistemological dimensions there is methodology which is the process of doing research and involves the methods used to analyse and learn about the social world, this takes into account the ideographic and nomothetic views of the participants (Laughlin, 1995). These views concentrate on whether the methodology analyses subjective accounts obtained by taking part or getting inside the research area as an ideographic method or whether the methodology is through the nomothetic method that tests hypotheses in a scientific way.

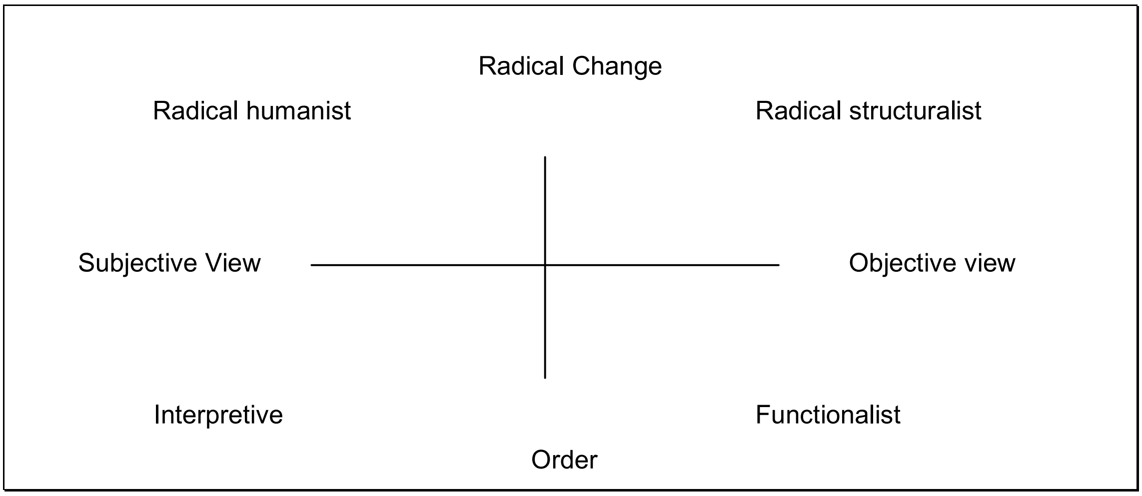
Under certain ontological assumptions the scientific method could be appropriate (Abdel-Khalik and Ajinkaya, 1979). Nonetheless, the scientific method is considered not appropriate for research based on other ontological assumptions where more subjectivist ways of gaining knowledge about the subject of the research are needed. Tomkins and Groves (1983) argue that naturalistic methods are needed. Nevertheless, there are also a range of possibilities and the appropriate methods need to be selected according to the particular ontological assumptions of the researcher.

Moreover, for the purpose of this study it may be sufficient to recognise that ontological assumptions are considered in discussing the research methodology. It is also important to consider that corporate governance researchers have the tools to formulate and investigate research problems according to the rules of scientific methodology such as: the identification of a problem, the accumulation of relevant data, and the empirical testing of hypothesis; thus, applying the same kind of research techniques to inquiries in corporate governance as they are being utilised in other areas of knowledge (Kothari, 2001).

Like every other social science, this research is based upon assumptions about the nature of social science and the nature of society. The way in which the study is conducted may be conceived of in terms of the research philosophy subscribed to, the approach that has been applied by Burrell and Morgan (1979) to organisational analysis which differentiate between four theoretical paradigms: the functionalist view; the interpretive view; the radical humanist view; and the radical structuralist view (see Figure 5.1).

Paradigms are sets of propositions that explain how the world is perceived; they contain a worldview, a way of exploring the complexity of the real world, telling researchers and social scientists in general 'what is important, what is legitimate and what is reasonable' (Guba, 1990).

Figure 5.1 Four views for the analysis of social theory



Source: Burrell and Morgan, 1979 – Four sociological paradigms

Moreover, the four paradigms define four different notions of the social world supported upon distinct theoretical assumptions regarding the nature of science and of society (Chua, 1986).

5.1.1 The Functionalist Approach

Burrell and Morgan (1979) used the term 'functionalism' which combines an objectivist view of the world with a concern for regulation. Functionalists regard society as a single system of interrelated elements, with each element of social life serving a specific function, and the role of the researcher is to discover the nature of those functions. Such work starts from an objective view of society, regards human behaviour that is generalisable as deterministic, uses empirical observation and a positive research methodology. It is concerned with effective regulation of the basis of objective evidence.

In the functionalist paradigm, the goal is replication in the service of theory testing and refinement; data should be collected and analysed in such a way that another researcher collecting and analysing similar data under similar conditions will find similar results, thus helping establishing the veracity of the theory. Theory development, although very desirable by researchers, is seldom practiced. The usual approach is deductive, using prior theory as a foundation for the development of testable hypotheses. These goals are based in the ontological assumption of objectivity – the world exists independently of those serving it, thus there is an objective reality that can be accessed – and the epistemological legacy of positivism, and are most often achieved through the methodological traditions of quantitative data collection and statistical analysis (Burrell and Morgan, 1979). The functionalist perspective is mostly regulative and pragmatic in its basic orientation, concerned with understanding society in a way that generates useful empirical knowledge (Morgan and Smircich, 1980).

5.1.2 Interpretive research

Interpretive research is based on the belief that a deeper understanding of a phenomenon is only possible through understanding interpretations of that phenomenon from those experiencing it. It places the emphasis of explanation in the subjective consciousness of the social participants instead of the objective observer (Burrell and Morgan, 1979). Under the interpretive paradigm, general rules and external rules of society do not exist and the aim of social research is to investigate the meanings and interpretations of social actors in specific situations. Because of the highly subjective nature of the interpretive research, studies tend to be small in scale and emphasis is placed on the validity and insight of the research, rather than simply the outcomes or results (Preston *et al*., 1992).

The ontological aspect of interpretivism holds that social reality is the result of interactions between actors in real social contexts. The social world, according to the interpretive paradigm, cannot exist outside of the independent minds of social actors. It is argued that in the process of understanding the social world, interpretive researchers try to make sense of the social character of daily life (Roslender, 1992). Burrell and Morgan (1979) state that:

> "The social world is no more than the subjective construction of individual human beings who, through the development and use of common language and interaction of everyday life, may create and sustain a social world of subjectively shared meaning" (p 260).

Given this view of social ontology, the experience of actors in any social context must then be nominalist; a process of subjective interpretation rather than a physical perception of the ‘real’ material world.

Epistemologically, the interpretive approach is anti-positivist in nature. Given that the social ontology is highly subjective, the epistemology is likewise highly relativistic and exclusive to the actors directly involved in the social activities. Knowledge and understanding can only be obtained by having the same frame of reference as the actor; consequently, such knowledge is distinctly subjective to the actors’ reality (Burrell and Morgan 1979).

Methodologically, the interpretive concept takes an ideographic approach to the study of society. As opposed to a nomothetic approach to methodology, Interpretivism requires a more detailed and thorough analysis of the social situation. An ideographic approach requires having knowledge and complete analysis of the subjective account of the actors or situation (Burrell and Morgan, 1979).

Interpretivists regard that human behaviour as highly voluntaristic in that they each choose the paths they take and the decisions they make. This is centred on the belief in autonomy and freewill (Lincoln and Guba, 1985; Macintosh and Scapens, 1990). Drawing on the interpretivist assumption of a subjective reality, it would follow that the individuals are, within that self-constructed reality, free to act out their desires and as they wish. There is no predetermined life path (Denzin, 1983; Dyer and Wilkins, 1991; Ahrens and Dent, 1998; Denzin and Lincoln and Guba, 2000).

Interpretivism has been identified as the paradigm most closely allied with this study, as the researcher’s interest is primarily subjective and qualitative in nature. The researcher’s appeal to the interpretive paradigm is based on the possibility of conducting a more intimate type of research, which will allow not only observing and learning about a given situation but also to become part of it in the sense that the researcher’s knowledge will become closely aligned to that of the actors themselves. It is expected that this kind of connection may lead to more meaningful research for both the researcher and the research subject. Besides, the interest is to conduct observational and personal interviews types of research. These are typical of the interpretive paradigm and allow for the greatest acquisition of situational understanding. While this type of research will be limited in breadth, it would be deep in substance and meaning.

At this point it is necessary to acknowledge the importance of quantitative and objective types of research, these means of explanation and answers only touch the possible truth. For the study of objects and phenomena outside of human social realities, positivist methods work well. However, when studying human social interactions, the unpredictability of human consciousness and by extension free will, creates too many variables for the researcher to believe that nomothetic methods can provide all the answers. The dichotomies between fact and truth are very important. They are also likely the primary motivating factor for choosing an interpretive paradigm. Facts are irrefutable. They can be proven time and time again without fail. Facts are derived from positivist epistemologies. They can be methodical and pure; absolute in their time. They give no regard to condition or circumstance. Facts are codifications of the physical universe (Morgan and Smircich, 1980).

Truths, on the other hand, are proven and disproven every day. Often based in fact, truths are the humanistic extension of facts. They are subjective and emotional, dynamic yet simple. Truths take facts and combine the totally of the environment, situation and unverifiable subjectivity of the individuals or things involved. A truth as a fact is encapsulated by life and that life is different for everyone thus the truth of a fact can be unique for each person (Berg, 1995).

By subscribing to the interpretive paradigm, the researcher expects to see the truth in every situation and simply focus on the facts. Having this subjectively grounded understanding in the difference between truth and facts allows the researcher to construct research questions with the precise understanding of the methodology and goals for this study. According to the subject of the research, the distinction of finding facts versus finding truths has been beneficial to both guiding and maintaining the research objectives.

Despite the high level of detail and meaning provided for when conducting the research within the interpretive paradigm, there are a number of inherent restrictions that might inhibit its overall usefulness. The primary deficiency of interpretive based research seems to be the paradigms lack of widely applicable facts. Yet, as because of the level of subjectivity in interpretive epistemologies, any results derived from its research might only be applicable to very specific social conditions of that research. Meaning, that may not be possible to take the results and apply them to other situations because they are subjective truths and not objective facts. However, these facts may have redeeming qualities that allow generalisation, when is considered as an alternative the depth to which explorations are conducted and description are written, resulting in enough details for the reader to grass the peculiarities of a given situation.

5.1.3 Radical Humanist and Radical Structuralist

The radical humanist paradigm, like the interpretive paradigm, clarifies how reality is socially shaped and socially sustained, but links the analysis to what it is described as the "pathology of consciousness", by which individuals become captive within the reality they create and sustain (Tinker, *et. al*., 1982).

The contemporary radical humanist critique focuses life in industrial societies. Capitalism, for example, is viewed as totalitarian; that capital accumulation shapes the nature of work, technology, and language. The radical humanist is concerned with discovering how humans can link thoughts and actions and try to change the world order (De George, 1995).

The *radical structuralist paradigm* definition is similar to that of the radical humanist as it also points to a view of society as a likely dominant force. However, it is linked to a materialist conception of the social world, which is defined by concrete ontological structures. Reality is seen as existing on its own account independently of the way in which it is perceived by people in everyday activities. This view of reality brings tensions and contradictions which inevitably lead to radical change in the system as a whole. The radical structuralist is concerned with understanding these tensions and the way in which those with power in society seek to hold others in check through different means of domination. Special attention is placed on the actions taken to overcome that domination (De George, 1995).

Burrell and Morgan (1979) use the terms 'radical structuralist' and 'radical humanist' to distinguish between: research which views society as shaped by social structures; and research that puts the individual at the centre of the picture and views society as the creation of individual social factors.

5.1.4 Alternative approaches

Each of these four paradigms defines the grounds of opposing modes of social analysis and has different implications for the study of organisations. As mentioned above the methodology reflected in this thesis is, in principle, within the “interpretive paradigm” of Burrell & Morgan (1979), which emphasises “subjetivistic” (instead of “objectivistic”) and “regulation” (rather than “radical change” approaches to social inquiry). The interpretive approach of research is used to make sense of human action and the meanings attached to issues in their everyday contexts (Chua, 1986). The interpretive approach examines how the research subjects develop their meanings, rather than the researcher interpreting those meanings (Denzin, 1983). The act of interpretation, to explain the meaning of something, lies at the heart of this approach, where interpretation is seen as a necessary condition for creating understanding (Denzin, 1983; Dyer and Wilkins, 1991; Ahrens and Dent, 1998).

The Burrell and Morgan framework makes available a practical outline and a categorisation of research; but it does not recognise other necessary research methodology features. Laughlin (1995, 2004) uses the Burrell and Morgan framework but avoids the subjective-objective dimension and builds a three-dimensional framework, which he names, theory, methodology and change.

The change dimension is similar to Burrell and Morgan’s approaches to society. However, Laughlin sees change as a continuum for which he creates three levels: low, medium and high. Researchers who think that only a low level of change is needed are at ease with the status quo. Those who are in the middle are open to the possibility for change, however they do not reject automatically the status quo position. And those who want a high level of change are not happy with the status quo and are of the view that society needs to be changed. Laughlin’s methodological dimensions are concerned with theorization and methodology that include the researchers’ experiences and difficulty of generating theories in the research process itself (Laughlin, 1995).

Additionally, researchers such as Chua (1986) focus on classifying research based on different basic beliefs about knowledge, physical and social reality, and the relationship between theory and practice. Scholars such as Morgan and Willmott (1993) use the term 'New accounting research' that centres on the social and reflexive nature of the world and criticise research practices that lack an empirical base.

Another feature that has been developing over the past decades is the tendency to use different methodological approaches characterised by increased variety in research. The functionalist and quantitative based research is becoming the dominant (Ryan *et. al*., 2002; Baxter and Chua, 2003), but there are growing trends of research integrating theories and/or methods commonly linked to different paradigms (Modell, 2005; Hoque, 2006). By expanding the view of the roles of companies, such research has the potential to generate important insights into the issues of theory testing (Lewis and Grimes, 1999). However, the idea of combining the aspects of more than one paradigm has faced resistance from scholars defending the idea of 'paradigm incommensurability' such as Burrell and Morgan (1979). This position argues that specific theories and methods have irreconcilable philosophical assumptions such that they cannot be combined in a successful and philosophically justifiable manner.

As mentioned above, the paradigmatic standpoint of the research in this thesis is the interpretive paradigm. The interest of the research is in the subjective reality of actors involved in different aspects of the implementation of corporate governance standards. Thus, an interpretive approach was needed in order to understand the social world of the organisations and human activity systems being studied. Additionally, the study seeks to acquire an understanding of the subjective experiences of individuals in these human activity systems, including individuals' consciousness and subjective perceptions as proposed by Burrell and Morgan (1979). Adopting an interpretive approach also addresses qualitative issues aimed at producing the understanding of social contexts and social processes of the organisations into which the study has been conducted. The next section describes the research methods used in this thesis.

5.2 Research Methods

Methodology is concerned with both the detailed research methods through which data are collected, and the more general philosophies upon which the collection and analysis of data are based. The focus of this part of the chapter is to describe the central concepts related to research methods. First, definitions of the methods used are introduced, followed by the description of the research design and the methods of data collection, then, a summary of the chapter is included.

Quantitative and qualitative research are two different ways of conducting research and the choice between them should be made in terms of their appropriateness in answering particular research questions. Moreover research, whether quantitative or qualitative, has to be based on underlying assumptions about what constitutes 'valid' research and which research methods are appropriate. In order to conduct and/or evaluate research, it is important to know these assumptions (Hirschheim, 1992).

Qualitative methods are designed to help researchers understand people and the social and culture contexts within which they live. Kaplan and Maxwell (1984) argue that the goal of understanding a phenomenon from the point of view of the participants and their particular social and institutional world is lost if textual data are distilled down and quantified.

Quantitative research can be seen as linked to positivism and to the practices of the natural sciences. The influence of positivism results in inductive and deductive accounts of the research process (Godfrey-Smith, 2003). Qualitative research drives from, and has been stimulated by, traditions that are different from a positivism orientation. The chief characteristics of qualitative research relate to phenomenology which provides a way of viewing social and cultural phenomena. This includes developing a description of an individual or setting, analysing the data for themes or categories, and making interpretations or drawing conclusions about its meaning personally and theoretically, stating what has been learned, and offering further questions to be asked (Wolcott, 1994). Less emphasis is placed on the need to develop objective methods of study and more on the value of seeing the world through the eyes of those being studied. Examples of qualitative methods are action research, case study research and ethnography. Qualitative data sources include interviews and questionnaires, documents and texts, and the researcher's impressions and reactions (Silverman, 2000).

Although most researchers do either qualitative or quantitative research work, some researchers have suggested combining one or more research methods in one study called triangulation (Lee, 1991; Mason, 1996; Mingers, 2001). For instance, Miles and Huberman (1984) give an empirical example where methods such as interviews, observation, collecting documents and recording are combined.

Evaluation design alternatives lead to reflection of the relative strengths and weaknesses of quantitative and qualitative data. Qualitative methods permit the researcher to study selected issues in depth and detail. Approaching fieldwork without being constrained by predetermined categories of analysis contributes to the depth, openness, and detail of qualitative inquiry. Quantitative methods, on the other hand, require the use of standardised measures so that the varying perspectives and experiences of people can fit into a limited number of predetermined response categories to which numbers can be assigned. The advantage of the quantitative approach is that it is possible to measure the reactions of a great many people to a limited set of questions, thus facilitating comparison and statistical aggregation of data. By contrast, qualitative methods typically produce a wealth of detailed information about a much smaller number of people and cases. This increases understanding of the cases and situations studied but reduce generalisation (Bryman, 2004, Creswell and Miller, 2000).

This thesis investigates corporate governance developments in Latin America, especially those of the Andean region. Despite an increase in awareness of the need and benefits that companies achieve by adopting good corporate governance practices, compliance with the recommendations is still very low across the region (Chong and Lopez-de-Silanes, 2007). The aim of this study is to look at the extent of the adoption of corporate governance principles in the Latin American Andean region, especial focus is towards the reason companies decide to adopt the principles, whether it is because companies are required to be accountable to their stakeholders or also because the companies are in need to show their legitimacy.

The empirical data in this study was gathered using a qualitative research method. It is believed this to be the best choice in this specific study because the research problem is complex to its nature. The governance standards to be adopted are many, detailed and in some cases difficult to understand. In addition, valuation is often made with subjective choices and preferences. The author therefore deems it necessary to come close to the source of information to be able to fully grasp the processes and choices made. Furthermore, closeness was needed to sort out the possibilities and problems the adoption of corporate governance brought to the stakeholders. In addition, it is the author's opinion that the choice to focus the study on regulators, company managers, independent directors and other company stakeholders enables deeper understanding of corporate governance.

5.2.1 Interviews

The first empirical piece of work involved interviews. The interview is a method of data collection in which the researcher asks a participant a series of questions relevant to the topic of the research. The function of the interview is to gain particular information from the participants; information which may be about their beliefs, their attitudes, their knowledge and experiences: whether it is considered to be relevant to the purpose of the research (Silverman, 2006). The aim is to collect the information with a minimum of distortion.

The interview is probably one of the most used methods in qualitative research. It is also a flexible research tool (Breakwell, 1995). It can be used at any stage of the research process: during the initial phase to identify areas for more detailed exploration and/or to generate hypotheses; as part of a pilot study or validation of other instruments; and as the main mechanism for data collection. Interviews can also be combined with other approaches in a multi-method design which may incorporate, for example, questionnaire measures or observation (Dunne, 1995).

Interviews can take a variety of forms depending on the type of data required to inform the research question being asked, as well as on the availability of resources. For example, in structured interviews the researcher prepares a set of questions with fixed wording and tries to obtain answers to these questions without deviate from the prearranged format. This facilitates the data analysis as there will be comparable categories for each respondent, and the researcher can analyse what each respondent says as an answer to each question and compare and contrast their responses (Silverman, 2006).

Contrarily, the use of unstructured interviews allows researchers the possibility to address a given number of topics, but there is not a set question for the interviewee. The questions and their order are not fixed and are allowed to develop during the interview process. Every subject may focus on a different aspect of the topic in question, and as a result data from individual subjects may not be comparable (Silverman, 2006). But, such data provides in depth information in great detail. Breakwell (1995) points out that the level of examination in unstructured interview may be the same level as that present on structure interviews since both are dependent on the knowledge and skills of the researcher. There are also disadvantages such as expending too much time on the edges of the subject, the danger of losing control of the interviewee, and diminishing of reliability when using non-standardised approaches to interview each respondent (Mason, 2002).

A type of interview which incorporates elements of quantifiable fixed-choice responding and the facility to explore, and probe in more depth, certain areas of interest are semi-structured interviews. This type of interview benefits from the advantages of both approaches: easier to analyse and quantify but also to provide more in-depth information where necessary (Mason, 2002; Silverman, 2006).

Interviewing, as any other research method, is also open to a number of biases and shortcomings; one of them is the difficulty of achieving reliable and valid results. Nevertheless, quantification and objectification of data obtained from interviews are a powerful means to remedy this and help the researcher to maintain objectivity right through the research process (Mason, 2002).

Semi-structured interviews were used rather than structured interviews or unstructured ones as it was believed semi-structured interviews provided the appropriate means to enquiry on corporate governance research, also the decision was been taken considering the resources available, methodological standards and preferences, and the type of information sought, which were determined by the research objective.

As a part of the empirical work, semi-structured interviews and protocol were developed. The interview questionnaires are contained in Appendix 5.1 Because of the methodology adopted, and in order to obtain the viewpoint of stakeholders in the Andean Region, it was decided that semi-structured would be employed. Interviews were used with the purpose of collecting personal observations and reflections from the participants on the process of implementation of corporate governance principles in particular the reasons from adopting them. Those interviewed consist of 21 stakeholders in Colombia including corporate managers, auditors, regulators, accountants and other company stakeholders. The choice of semi-structured interviews has been also informed by previous corporate governance research; for example, Gendron and Bernard (2004), Hannah (2003), Cohen, Krishnamoorthy and Wright (2002, Wanyama, 2006, Bondakamara, 2009) employ semi-structured interviews in their studies of accountability and corporate governance.

Using an 'interview guide' or list of questions and topics that need to be covered during the conversation, usually in a particular order, a semi-structured interview allows the interviewer and respondents engage in a formal interview. Nevertheless, although the interviewer follows the guide; there is the possibility to pursue topical trajectories in the conversation that may wander off from the guide as appropriate.

In addition, using a flexible format allows the use of predetermined questions, but with the possibility to modify based upon the researcher's perceptions of what seems more appropriate. It was possible to change the order of questions and give explanations when needed; particular questions which seem inappropriate with a particular interviewee were omitted, and additional ones included. Additionally, as different categories of people were interviewed, separate questions were used for each category of stakeholder (see Appendix 5.1). For example, as the study is about corporate governance, semi-structured interviews were conducted with company managers, auditors and other stakeholders some questions in the different guides may overlap, but each guide was tailored to obtain information specific to the category of participant being interviewed.

The interviews were tape recorded when it was possible; however, during the interviews, brief notes were also taken to aid the researcher; the interview data includes as well the interviewer's notes documenting observations about the interview content, the participant and the context. The researcher explained the purpose of the interview to the participants within the broader context of the research study. In addition the necessary assurance about confidentiality was given to all participants.

5.2.2 Case study

Conducting the a case study were some tasks that needed to be carried out by the researcher these tasks include: preparation for data collection, performing direct observations, conduct interviews, distributing a survey questionnaires, gathering available documents and attending pre-programmed corporate governance related events in the Andean region. In case studies it is recommended that the data collection process should be treated as a design issue as this enhances the construct and validity of the study, and the external validity and reliability (Yin, 2003).

Additional data was gathered from documents such as historic information about the organisation, financial statements of the 15 CAF pilot companies, information published in these organisation’s web pages and any other document obtained from the organisation’s officers. Permission for the use of documents was obtained whenever was necessary to collect acquired information that was not publicly available but was learned through observation and the interviews. The case study took as its subject a financial development entity whose activities were studied using a variety of data collection techniques and methods that allows a more rounded, holistic, study and a complete account of regulatory processes. The aim was to provide a rich detailed portrait of a particular phenomenon, the effect of the implementation and compliance with corporate governance regulations throughout the Latin American Andean region.

Yin (2003) defines the case study research method as an empirical inquiry that “investigates a contemporary phenomenon within its real-life context;” where the boundaries between a phenomenon and its context are not clearly evident and where multiple sources of evidence are used. Yin suggests that when choosing case study sites researchers should consider a theoretical phenomenon rather than statistical generalisations, as the focus of the study. He compares a case study with experimental research. Using case studies it is possible to collect data from multiple sources, including documentary evidence, interview data, direct observation, and participant observation.

The use of mixed methods of research is becoming a common practice and an increasing number of academic writers seek to justify combined methods.

Critics of the case study method believe that the study of a small number of cases offer no grounds for establishing the reliability or generality of findings (Lincoln and Guba, 2000; Becker, 1998). Others feel that the intense study of the case biases the findings (Donmoyer, 2000). Some dismiss case study research as useful only as an exploratory tool (Alasuutari, 1995; Ryan *et al*., 2002). Against these scholars such as Chua (1986), Tinker (1980), Hopper *et al*. (1987) have questioned the use of positive or scientific methods in research, arguing that these methods fall short of accounting for real events and the subjectivity of social practices. Researchers can use the case study research method with success if carefully planned and crafted to study real-life situations, issues, and problems. Reports on case studies from many disciplines are widely available in the literature (for example: Anderson *et al*., 2002; Modell, 2005; Modell and Lee, 2001).

There are a number of advantages in using case studies. One of them is that the data is most often conducted within the context of its use (Yin, 2003) that is, within the situation in which the activity takes place. The case study in this thesis is interested, for example on the reasons why an organisation implements corporate governance. To explore these motivations, the researcher, must observe how functions in the related matter are performed within the organisations own environment. This would contrast with experiments, for instance, which deliberately isolate a phenomenon from its context, focusing on a limited number of variables (Stake, 1995).

Another advantage of case studies is that they allow for both qualitative and quantitative data. Some observational research studies that involve repeated observations of the same items over long periods of time, for instance, rely on qualitative data from journal writings which give descriptive accounts of behaviour (Yin, 2003). Yin also cautions researchers not to confound case studies with qualitative research, he also notes that "case studies can be based … entirely on quantitative evidence" (Yin, 1984, p 25). An additional advantage of case studies is that they produce detailed qualitative accounts which not only help to explore or describe the data in real life environment, but also help to explain complexities of real life situations which may not be noticed through experimental research (Yin, 2003).

Despite these advantages, case studies have received criticisms. Yin (2003) mentions some types of arguments against case study research. For instance, case studies are accused of a lack of thoroughness. Examples of this are those case studies where the researcher allows equivocal evidence or biased views to influence the direction of the findings and conclusions. Another criticism is that case studies do not provide a basis for scientific generalisation since they use a small number of subjects and some conclude with only one subject (Tellis, 1997). An additional disadvantage of case studies is that they are often labelled as being too long, difficult to conduct and producing a large amount of documentation (Yin, 2003).

Interpretive research rests on the assumptions that access to reality is through social constructions such as language, consciousness and share meanings. Interpretive studies generally attend to understand phenomena through the meaning that people assign to them (Walsham, 1995). Interpretive research does not predefine dependent and independent variables, but focuses on the full complexity of human sense making as the situation emerges (Kaplan and Maxwell, 1994).

Positive research, however, assumes that reality is objectively given and can be described by measurable properties which are independent of the researchers and their instruments. Positivist studies generally attempt to test theory, to increase the predictive understanding of phenomena (Yin, 2003). Positivists normally seek evidence of formal propositions, quantifiable measures of variables, hypothesis testing, and the drawing of inferences about a phenomenon from the sample to a stated population (Straub, Gefen and Boudreau, 2004).

Case studies entail detailed contextual analysis of a limited number of events or conditions and their relationships over a continued period of time (Stake, 1995). Researchers have used the case study research method for many years across a variety of disciplines. Social scientists, in particular, have made wide use of this qualitative research method to examine contemporary real-life situations and provide the basis for the application of ideas and extension of methods (Adams, et al., 2006).

In this thesis CAF is the focus as the organisation working through the region highlighting the benefits a company may achieve when adopting sound corporate governance practices. To obtain the empirical data the researcher first spent some time at CAF's headquarters in Caracas (Venezuela) as well as at the regional Office in Bogotá (Colombia).

Second, information published by PROCAPITALES[30] is analysed which contains interviews with 24 Peruvian directors and provides information relevant to the analysis of corporate governance developments in the Andean region. In the PROCAPITALES' interviews the directors explain the meaning of corporate governance, the reasons for the implementation of the principles in their companies and the benefits expected from the implementation. Additionally, a description of the sources of information about the activities taking place in Bolivia is taken from the Bolivian Stock Exchange (Bolsa Boliviana de Valores – BBV) as it relates to the implementation of corporate governance practices.

Third, information is extracted using document analysis from the annual reports of some of the 15 companies that took part in CAF's pilot study[31]. CAF has used the experiences of the companies that took part in its pilot study to support and promote the implementation of the LCAGC in companies located in the five Andean countries.

Fourth, the information analysed above is supplemented with data gathered by the researcher who attended conferences, seminars, forums and workshops in these Andean countries that focused on corporate governance related issues. Information is taken from the presentations that were made by experts in the field of corporate governance at these sessions. Data is also taken from publications collected at the events attended or documents received from the participants.

Fifth, the analysis also includes the results of a survey conducted during one of the events attended by the researcher. A questionnaire was distributed to the participants at the

[30] PROCAPITALES (Association of Capital Market Developers) is a Peruvian business association dedicated to the promotion of private investment.
[31] It was not possible to optain the annual reports of three of the fifteen companies that were included in CAF's pilot study. Additionally, for three of the companies in the analysis were accessed only annual reports for two of the four years period covered by the document analysis.

event, asking their views on some key corporate governance issues (see Appendices 6.1 and 6.2). The survey was carried out to gain an insight into the knowledge and understanding of the developments of the topic of corporate governance in the Andean region among the attendants at the event. Next short descriptions of two methods, document analysis and survey which were used as part of the case study, to complement the data gathered through interviews carried out with CAF's staff, directors from organisations acting as CAF's counterparts and company directors from organisations that took part on CAF's pilot study. Equally, data gathered from interview performed by PROCAPITALES with Peruvian stakeholders.

5.2.2.1 Documents

Documents may be treated as a source of data in their own right; they can be an alternative to interviews, questionnaires, or observation. The term document covers a wide variety of different sources, from personal documents, such as diaries and photographs to official documents of the state or private sources, such annual reports, mass media outputs, and virtual outputs such as the Internet. There are also different approaches for evaluating data extracted from documents; content analysis, semiotics and hermeneutics (Scott, 1990; Lee, 2000).

As other methods of social research, content analysis is a documentary method that aims at a quantitative and/or qualitative analysis of the context of texts, pictures, films and other forms of verbal, visual or written statements. This analysis may be related to forms of communication, intentions of the communicator, arguments, text style, the audience and motives, attitudes or values. Scholars, for example have study corporate governance issues focusing in documents such as annual reports, company's internal communications, auditors' reports, and general assembly minutes (Gibbs, 2001).

In document analysis the focus is on description, identification of trends, frequencies and inter-relationships, and, sometimes statistical analysis. Examples of document analysis are: basic analysis producing summaries of factual information or biographical research; and secondary analysis (Lee, 2000). Scott (1990, p. 6) suggests four criteria for assessing the quality of documents, including: *authenticity*, related to genuine origin of the data; *credibility* which refers to data which is free from error; *representative*, this means the data represents the source it is expected to represent; and *meaning*, in other words the data is clear and comprehensible.

Many documents relevant to the case study were collected during the course of the study. The validity of the documents was reviewed so as to avoid incorrect data being examined (Yin, 2003). A variety of documents collected include: letters, memoranda, other communications, agendas, announcements and minutes of meetings and other written reports or events, and administrative documents such as progress reports and other internal records.

In addition to the analysis of the documents gathered during the fieldwork this study includes further empirical research consisting on the document analysis of data gathered from documents such as annual reports, minutes of meetings and other official reports, also used to get a better understanding of the way Andean companies are dealing with accountability and legitimacy issues in relation with the application of corporate governance principles. Here the focus of the analysis is on description, identification and sometimes statistical analysis.

The main source of data for this part of the study is taken from the financial statements and other company reports and information, for the period 2005 – 2007, of the annual reports of the 15 Latin American companies which adopted CAF's corporate governance guidelines as a part of its pilot study.

2005 was established as the starting point of research for all companies as this was the year before the pilot study began; this is done to gain an understanding of how the companies reported before they implemented the corporate governance guidelines.

The analysis of documents, in this case financial and non-financial annual reports was focused on the meaning and interpretation of the text rather than trying to measure objectively specific attributes of the text contents. Through this method it was expected to be able to identify and describe the main content of the data, chronologically, thematically or otherwise.

5.2.2.2 Surveys

A survey is a means of gathering information about the characteristics, actions, or opinions of a group of people. Surveys include cross-sectional and longitudinal studies using questionnaires for data collection (Babbie, 1990, 2001). On cross-sectional designs all measures are taken over short period of time. Longitudinal designs use of repeated measures on one or more variables over an extended period of time where the main focus is on trends occurring over this period.

A survey is one commonly used method of conducting scholarly research. The broad area of survey research encompasses measurements that involve asking questions of respondents. A 'survey' can be anything from a short paper-and- pencil feedback form to an intensive one-to-one in-depth interview; or can be a written document that is completed by the person being surveyed, an online questionnaire, a face to face interview, or a telephone interview. Surveys also provide convenient way of gathering information from a large or small population (Silverman, 2000).

In general, surveys are methods of data collection in which information is gathered through oral or written questioning. Oral question is known as interviewing[32]; written questioning is carried out through questionnaires, which can be handed to the respondents personally by the researchers in their homes, at work, a training venue, or any other place; they are returned to the researcher after completion. These are known as self-administered or self-completion questionnaires (Bryman, 2004).

Questionnaires are highly structured methods of data collection. Their advantage over interviewer-led methods is that they are cheap, particularly if they can be group-administered. Even postal questionnaires could be cheaper than the use of interview schedules; in addition, an investigation by questionnaire may be conducted more rapidly than by any other highly structured data-collection method (De Vaus, 2002).

[32] Interview also employs a form of questionnaire in a format of an interview guide, since such guides are often as rigid and as standardised as questionnaires, the discussion presented in the interview section in this chapter is also pertinent to questionnaires. Hence this part of the chapter will introduced the study of questionnaires in a general manner, concentrating in questioning rather than on strictly questionnaires.

Based on the literature referred to in chapters two and three, a questionnaire survey was used to take advantage of a unique opportunity to get information from those stakeholders whose companies are considering implementing the Andean Corporate Governance Guidelines or have just started their implementation. The aim of the explanatory, cross-sectional survey was to find answers to questions such as:

(a) What does corporate governance mean for the participants?

(b) How have corporate governance developments affected their organisations?

(c) Why have their organisations decided to implement the Andean Corporate Governance Guidelines (ACGG)?

(d) What do they expect from the implementation of the ACGG

(e) What are participant's views on some of the potential benefits of ACGG?

These questions were aimed to answer the three research questions for this research. Specifically, whether the respondent believe corporate governance in the region is seen from a stakeholder perspective and also whether the adoption of the principles is because organisations want to show their accountability towards their stakeholders or/and legitimate their activities.

Surveys suffer from problems in research design, sampling procedures, and data collection. There are weak in capacities such as: survey type, mix of methods, representative samples, and response rates. A cross-sectional study it is believed to be the most appropriate in this case as there are limitations which would difficult the use of a longitudinal study.

The data was gathered using questionnaires (Appendix 6.1 and 6.2) developed by the researcher to reflect recent developments and corporate governance concerns specific to the Latin American Andean region. The questionnaires were distributed to all the participants at the Corporate Governance Forum hold by Confecámaras in Bogotá (Colombia) 24 November 2009. The researcher was able to collect 80 completed Questionnaires. These corporate governance events are mainly training activities which are targeted to managers, auditors and other company stakeholders in the Andean Region and which are aimed to enhance the knowledge on the corporate governance guidelines issue by CAF.

The main body of the questionnaire includes the questions to be answered. In order to be effective, special attention was given to the content, structure, wording, and format to adhere to basic rules of questionnaire construction as this is the part that enabled the researcher to collect the data required for completion of the study (Foddy, 1992). A summary of the sources where data for this study where gathered is included in Table 5.1.

Table 5.1 Sources of evidence

ACTIVITY	DESCRIPTION			
Case Study				
11 Interviews				
CAF's staff – 4 CAF Officials	2 Based in Caracas' Head Office (one of them a Peruvian national) 2 Based in CAF's office in Colombia			
4 Officials from CAF's Counterparts	2 from Colombia (Comfecámaras and BVC*) 1 from Ecuador (BVQ) 1 from Venezuela (AVE)			
3 Directors from CAF's Pilot Study Companies	2 from Ecuador (NIRSA and Ecoelectric) 1 from Colombia (Mac)			
PROCAPITAL's Interviews				
24 video recorded interviews with Peruvian directors	Included directors from two of the companies that took part in CAF's Pilot Study			
Documents: Annual Reports				
From CAF's 15 Pilot Companies	**2005**	**2006**	**2007**	**Total**
2 companies from Bolivia	1	1	1	**3**
3 companies from Colombia	1	3	3	**7**
3 companies from Ecuador	2	3	3	**8**
5 companies from Peru	3	4	4	**11**
2 Companies from Venezuela	2	2	2	**6**
Total annual reports analysed	**9**	**13**	**13**	**35**
Other Documents:	***Publications received from some of the interviewees or gathered at events attended***			
Responsibility Sustainability (Magazine) July & September 2008	It is a quarterly publication offering solutions to comprehensive communications concerns and projects through responsible and sustainable business practices			
Baseline Design – Final Report – MIF (Fomin), IADB, BVQ - 2007	Presentation of the empirical evidence collected through a survey with a sample of Ecuadorian organisations			
The Return of the Left and the Future of Reform in Latin America – CIPE - 2008	A collection of different articles describing the current political situation throughout Latin America			

Supply & Demand: Development of Corporate governance Practices. BVQ, IADB – 2007	An analysis on the current trend in the implementation of corporate governance principles in Ecuador
Legal Perspectives on Corporate Governance in Colombia, Confecámaras, CIPE - 2007	The aim of the publication is to contribute to the study of corporate governance related laws and regulations in Colombia
Successful Experiences of Corporate Governance in the Andean Region – Confecámaras CIPE – 2007	This is a summary of some of the efforts undertaken by different organisations supporting the implementation of corporate governance in the Andean region
"Codigo Pais" Colombian Code of Corporate Governance – Superintendence of Finance - 2007	It is common effort as it gathers public and private sector actors to get to a unified code with the consensus of everyone. It also gathers all previous voluntary recommendations. However, it does not intend to unify the existing standards.
Manual of Corporate Governance practices for closely held companies – CAF – 2006	The manual is addressed to companies, whose shares, unlike those publicly held companies do not trade freely in stock markets, either because their shares are held by a small number of persons or because they are subject to restrictions that limit their transferability. Closely held companies normally include family-owned companies, private investor-owned companies, joint ventures, and privatised companies.
Analysis of CAF Andean Code of Corporate Governance in the face of Ecuadorian Company Law, BVQ – 2007	An analysis of the need to implement corporate governance practices in Ecuador, especially the adoption of the Andean Code taking into account the existing regulation in that Country.
Guidelines for an Andean Code on Corporate Governance. CAF – 2006	CAF's corporate governance recommended standards, which are to some extent based in the OECD principles
Corporate governance: What you should know as the employer	The aim is to bring corporate governance issues to non-specialists. The intention is to show that the subject is not academic or complicated. On the other hand, it refers a series of guidelines from common sense and experience.
Case studies of good corporate governance practices – IFC, OECD – 2005	Includes a summary of the corporate governance implementation process in a group of Latin American organisations
White Paper on Corporate Governance in Latin America, OECD – 2004	Using the OECD corporate governance principles as a conceptual framework for analysis and discussion, the 'white paper' examines the importance of good corporate governance for the region, considers the trends and individuals characteristics and make recommendations for the Latin American committee, also set priorities for reform
In search of good directors: A guide to the formation of corporate governance in the 21st century, CAF – 2003	It is a compilation of corporate governance related articles written by academics, international consultants and company directors.
Principles of Good Corporate Governance for Peruvian Companies, CONVASEV – 2002	The document is recommended to be taken as a good practice guide and its implementation as evidence of clear capacity for self-determination and self control.

Challenges for the New Millennium in Latin America: Competitiveness, Sustainable development and Second-generation reforms, CAF - 1998	It is a compendium of the vision on three key issues in the current debate in the region: the challenge of sustainable development, the challenge of competitiveness and the need to emphasize in the equilibrium between different forms of financing companies.
Videos	
Good Corporate Governance: Professional Management Award PROCAPITALES	Introduction of PROCAPITALES Peruvian corporate governance contest and the interviews with 24 company directors
Commitment to Good Corporate Governance: POCAPITLES & UPC Contest	Introduction of corporate governance meaning and the importance of the adoption good practices by Peruvian organisations
Corporate Governance in Ecuador: BVQ	A summary of recommendations making the case for the implementation of corporate governance in Ecuador
Events	
Workshop -Training CG Advisers	Speakers: Francisco Prada (Risk Analysis and Empresarial Practices); Edgar Suarez Ortiz (Director at Suarez Asociados)
Strategies for Efficient local Development	Speakers from OECD, CAF and the Colombian National Planning Department (DNP)
Why Corporate Governance?	Speakers: Francisco Prada (Risk Analysis and Entrepreneurial Practices at the Colombian Superintendence of Companies); Juan Carlos Herrera (CEO Corporation CREO)
Effective Administration for Family Businesses Seminar	Speakers: Kurt S. Schulzke (Professor of Commercial Law and Accounting); Urko Lopez (Lecturer at Mondragon University); Gaia Marchisio (Lecturer at Milan University)
Corporate Governance in Family Business	Development, structure and corporate governance in family-owned businesses. Among the key speakers there were Hernando Ruiz Lopez (acting Colombian Finance Superintendent) and Egenio Marulanda (Confecámaras Chairman)
International Seminar about Postgraduate Education	Speakers: Carlos Caballero Argaez (Universidad de los Andes (Principal), Cecilia Maria Velez (Colombia Education Minister), Andres Bernasconi, Dorothy Zimberg, Francisco Miranda, Adriana Jaramillo, David Johnstone
International Corporate Governance Seminar	Speakers: Christine Helliar (Dean School of Business, University of Dundee); Patricio Peña (Chairman' BVQ); Sonia de Paola Gadmann (CEO AVE)
Workshop -Training CG Advisers	Speakers: Alejandra Ospina Giraldo (CEO, ComprometeRSE);
Survey	
Questionnaire distributed among the attendants at the International Corporate Governance seminar 80 answered questionnaires were received	The respondents to the questionnaire were: 42 consultants 22 business persons 5 students 11 others (including those with more than one activity

Interviews	
21 Colombian individuals	The interviewees were divided in four **G**roups: G1 – Company directors (4) G2 – Regulators (4) G3 – Independent non-executive directors & Auditors (4) G4 – Others (including academics, journalist, investors, and other users of company information) (9)

This table outlines all the data sources used in this research

5.3 Summary

This chapter sets out the research methodology and methods supporting the current study. The way in which the described methodological approach can be linked to the context and concerns of this research has been explored in this chapter. Yet, despite the complexity of each of the paradigmatic approaches, there is the feeling that the researcher perspective relates closely to the interpretive paradigm. Additionally, there is confidence in that viewing the social world as a subjective creation between social actors is the correct approach for this doctoral research. This is also important considering that the study is qualitative in nature. Therefore this approach will make possible to draw a more complete understanding and subjective truth from the research project. This discussion is followed by an overview of the research methods which will be used during the investigation. Qualitative research methods were used as these will allow the thesis to present a comprehensive study into corporate governance in the Latin American Andean Region which probes to be issues currently under-researched in the academic literature.

The questions raised with the interviewees were based on the literature review which included an identification of the corporate information needs of stakeholders. The case study used different methods of data collection to gather additional evidence. Both these research methods provided in-depth insights on attitudes and perceptions of respondents to a range of issues that straddle corporate governance and institutional investment issues in the Latin American Andean region. The results from the interviews with Andean's stakeholders are employed to add to the case study results. Consequently, the findings for this study are believed to be more detailed than previous studies which have typically not elicited the views of related individuals about the issues being investigated. The next two chapters analyse the findings of these semi-structured interviews and the case study.

CHAPTER SIX

Semi-structured interviews

CHAPTER SIX

Semi-structured Interviews

Introduction

This chapter analyses the views of Colombian experts to investigate whether organisations in the Andean region are implementing corporate governance principles because they want: (i) to engage with their stakeholders; (ii) be accountable to all their stakeholders; or (iii) show the legitimacy of their activities.

The interviews were conducted over a period of three months, during which twenty-one semi-structured interviews were completed. The interviewees were selected with the intention of having a group of individuals with the background and experience necessary to contribute to the research with authoritative knowledge and interesting perspectives relevant to the implementation of corporate governance in the Andean region or at the country level; for this reason officials from the organisations in charge of the development of corporate governance standards in the region were contacted. Another motivation was to speak to regulators, company managers, independent directors, auditors and outsiders such as lecturers, investors, journalists and students. In particular the interviews concentrated on: (i) general corporate governance issues such as corporate governance structure, definitions, attitudes towards corporate governance, board of directors' structure; (ii) stakeholders' roles in shaping corporate governance; (iii) accountability towards stakeholders; and (iv) the legitimisation of corporate practices. The data gathered through the interviews was analysed in the theoretical context of stakeholders, accountability and legitimacy as laid out in Chapter Four. The method used is in line with Creswell's (2003) approach of using interviews to collect data under phenomenology; this data may then be used to describe and interpret a cultural and social group. This chapter is complemented by the analysis of information gathered through the case study presented in Chapter seven which introduces the developments of corporate governance in the Andean region based on the support of the implementation of corporate governance principles given by the Andean development corporation (CAF).

The chapter is organised as follows. Section 6.1 provides details about the interviewees; section 6.2 discusses the impact that the 2001 Resolution 275 has had in the development of corporate governance in Colombia. Section 6.3 introduces general corporate governance from a stakeholder perspective. Section 6.4 presents the interviewees' corporate governance definitions, including the attitude towards corporate governance and issues on whether the corporate governance principles should be voluntary or strengthened by regulation. Section 6.5 introduces issues about the adoption of corporate governance by SMEs and family-owned business. Section 6.6 discusses corporate governance in state-owned enterprises (SOEs) versus non-SOEs. Section 6.7 Discuses the overlap between CSR and corporate governance. Section 6.8 Introduces corporate governance structure, including issues such as board of directors; the need for independent directors; remuneration policies; internal controls and risk management; and auditors appointment. Section 6.9 summarises and concludes the chapter.

6.1 The interviewees

Twenty-one interviews were conducted in two major Colombian cities, Bogotá and Cali. The choice of Bogotá and Cali was premised on the sizeable industrial, commercial and service sectors in these cities as evidenced by the significant presence of corporate organisations, state-owned enterprises, investors, and representative offices of foreign organisations. These interviewees were chosen in the two above mentioned cities and were selected because they had a great deal of knowledge about, and experience of, the corporate governance implementation process, primarily in Colombia but also at the regional level, as the majority of them had taken part in activities undertaken by international organisations such as CAF, OECD, CIPE, and BID, helping companies in the Andean region make informed decisions when they choose to implement corporate governance. For example, the regulators interviewed included officials at the Superintendence[33] of Finance, which is the organisation which overlooks financial institutions in Colombia; there were also officials at the Superintendence of Companies which overlooks companies in other sectors of the Colombian economy. An official from

[33] Superintendence is governmental offices in charge of the administration of a specific bureaucratic function. For example the function of the Superintendence of Finance was to deal with the state expenses. This sort of organisation is dated from the French 'Ancient regime' or the government before the French revolution. The term Superintendence is commonly used through all Latin America.

one of the Colombian Chambers of Commerce was also interviewed as these organisations are some of the principal promoters of corporate governance principles by Colombian companies. Several interviewees were contacted following recommendations from those who had already been interviewed. Additionally, some interviewees were invited to participate after meeting them at events attended by the researcher. Most of the interviews lasted between three quarters of an hour and one hour, two of them lasted one and a half hours. Most of the interviews were conducted during the working day at the interviewees' offices and recorded with the interviewees' consent. Two interviews were conducted at a coffee shop outside working hours; this made it difficult to tape these two interviews. All the interviews were carried out in Spanish.

The interviewees for the whole study (Interview Chapter and Case Study Chapter) were grouped into seven categories. The first four categories are used to group the individuals whose interviews are discussed in this chapter (see Table 6.1); these four groups are: G1 Managers and CEOs; G2 Regulators; G3 Independent board directors and auditors; and G4 outsiders including academics, investors and other users of organisations' financial and other information. The remaining three categories are integrated for individuals whose views are discussed in Chapter seven, they are as follows: G5 CAF's Staff; G6 CAF's Counterparts; and G7 Managers from CAF's Pilot Study Companies. The interviewees were assigned codes, so that their identity would remain anonymous. A summary of the interviewees' background information is provided in Table 6.1. This table shows some of the characteristics about the interviewees. Their gender (male (M), female (F)); function (which relates to their employment position); the size of the organisation they work for; the economic sector to which the organisations belong; and the interviewee group as explained above.

A review of the information presented in Table 6.1 revels that a majority of the interviewees (80%) hold a senior position, thus their views should offer thoughtful insights about the implementation of corporate governance principles in Colombia. The table also indicates that there is not a big difference among male and female interviewees (9 women and 12 men) and that most interviewees (85.8%) are employed in large organisations; two of them (9.5%) are from small firms; and only one is from a medium-sized organisation.

Table 6.1 Interviewees

Interviewee	Gender	Function	Organisation size	Sector	Group
A1	F	Director EEB (1) Foundation	Large	Electricity transport	G1
A2	F	Shareholders liaison officer	Large	Telecom	G1
A3	M	Director RSE (2)	Large	Finance	G1
A4	F	CG Director	Large	Manufacture	G1
A5	F	Director of RSE & Communications	Large	Business association	G1
A6	F	CEO RS Magazine	Medium	Media-Journal	G1
A7	F	Ex- Company Director	Large	Financial Institution	G1
A8	F	Judicial Vice President	Large	Chambers Commerce	G2
A9	M	CG Supervisor	N/A	Regulator	G2
A10	M	CG Supervisor	N/A	Regulator	G2
A11	M	Director CG program	Large	Governmental Institution	G2
A12	M	Audit Director	Small	Audit firm	G3
A13	M	Independent Director	Large	Business advisor	G3
A14	M	Independent Director	Large	Companies association	G3
A15	M	Independent Director	Small	Business advisor	G3
A16	F	Senior lecturer	Large	Higher education	G4
A17	M	Senior lecturer	Large	Higher education	G4
A18	F	Senior lecturer	Large	Higher education	G4
A19	M	Senior lecturer	Large	Higher education	G4
A20	M	Senior lecturer	Large	Higher education	G4
A21	F	Post-graduate Student	Large	Higher education	G4

Note: This table shows some of interviewees' characteristics, their job title, gender distinguishes male (M) from female (F) interviewees, function relates to their occupation, the size, and the economic sector in which the organisation is categorised. The interviewees were also grouped in four categories: G1 Manages and CEOs, G2 Regulators, G3 Independent Directors, Auditors and Accounting Firms, and G4 Users, Academics and Investors.
(1) EEB – Empresa de Energia de Bogotá (Bogotá Electricity Supplier); *(2)* RSE, is the Spanish for CSR.

The inclusion of a high number of outsiders (42.8%, of those interviewed) is justified by the degree of understanding these individuals have about corporate governance issues, as they are people who have hold different positions at diverse business organisations. For example, the lecturers are all directors of research and consultative offices within their organisations. Furthermore, some of them have been members of government committees set up previously in the country to develop corporate governance principles. Another key point to mention from the tables is that amongst the interviewees are three individuals (in G3) who combine appointments as independent non-executive directors at some organisations with full-time or part-time employment as academics, advisers, or directors at different organisations. Equally, the post-graduate student had recently completed her dissertation examining corporate governance issues in Colombia, and it was expected to gain some insight about her experience undertaking this kind of study in the country.

To conduct the interviews, a semi-structured interview questionnaire was used that included questions of be asked to all the interviewees and then five specific group questions addressed to individuals in each group. These questionnaires were designed to give some direction to the interviews and to ensure that all relevant information was gathered; copies of the questionnaire with versions in English and Spanish are included in Appendices 5.1 and 5.2. Although the questionnaires gave a focal point to the interview process, it was possible to encourage interviewees to discuss more openly their views, experiences, perceptions and opinions regarding the implementation of corporate governance in the Andean region and in particular in Colombia. The questionnaire was divided into five sections. The first section asked some background details about each interviewee. The second section of the semi-structured questionnaire was aimed to find out to what extent the interviewees were aware of developments in the implementation of corporate governance principles in Colombia. In order to examine Colombian stakeholders' understanding of corporate governance the interviewees were free to express their definitions of corporate governance; equally interviewees' views about setbacks, improvements, benefits and any other issues affecting the adoption of corporate governance in the country were asked. Section three aimed to find out the interviewees' views about particular corporate governance issues, such as the board of directors, board committees, internal control and risk management. The fourth section included questions about stakeholders' roles influencing corporate governance in their organisations. Finally section five included questions asking whether companies adopted corporate governance principles to show accountability to their stakeholders and/or to legitimate their activities.

It is important to note that, although a questionnaire was used to conduct the semi-structured interviews, the respondents were given the freedom to speak freely about the issues and expand their responses in the way they considered appropriate. Moreover, several of the interviewees expanded their responses using information taken from books, magazines, articles or leaflets, written in some cases by themselves or consulting their laptops, during the interviews and justifies the degree of detail of the data obtained at the interviews.

6.2 Corporate governance developments in Colombia

According to all of the interviewees, the private sector has played a key role in the effort to implement corporate governance practices in Colombia. The interviewees noted programs coordinated by Confecámaras and the Colombian Stock Exchange (BVC) to promote corporate governance have had a great impact. Both programs have received technical assistance from international institutions such as the Andean Development Corporation (CAF), the Centre for International Private Enterprise (CIPE), the International Finance Corporation (IFC), Inter American Development Bank (IADB), and the Organisation for Economic Cooperation and Development (OECD). Different activities, mostly jointly held by some of the above mentioned organisations, have been used to support the implementation of corporate governance standards at different companies.

Interviewees A13 (Independent director) and A20 (senior lecturer) summarised corporate governance practice in Colombia as the product of many factors, and that these practices are cemented in four corporate governance codes: the Confecámaras Code[34] (2001), targeting listed companies; the SME Code of Corporate Governance (2003) issued by a committee formed by Confecámaras and the Ministry of Commerce, which is addressed to small and medium enterprises; the Andean Code (first version, 2005) issued by CAF, targeting listed and non listed companies in all Andean Countries; and the new Colombia Corporate Governance Code (Country Code) – 'Codigo País' (May 2007) issued by a committee formed by the Superintendence of Finance and a group of private organisations, addressed to listed companies. According to them the development of corporate governance codes in the country has been strongly influenced by regulations

[34] This code was written for a private sector committee integrated by: Asofondos (National Association of Pension Funds); BVC; Spencer Stuart; Universidad de los Andes; ICESI; Universidad Externado de Colombia; Bogotá and Cartagena Chamber of Commerce; Revista Dinero; KPMG; and Confecámaras.

specifically: Law 222 (1995); Resolution 275 (2001); Law 795 (2003); Law 964 (2005); and Decree 3923 (2006).

Equally, Interviewees A13 (Independent director) and A16 (senior lecturer) noted that the first corporate governance standard in Colombia originated in the 1971 Commercial Code, modified in 1995 by Law 222, that mandated some practices of corporate governance in the legal framework; all of these compulsory rules govern both Colombian public and private companies. According to Interviewee A20 (senior lecturer), the most relevant rules for corporate governance are: (i) standards defining directors' duties; (ii) the compulsory mechanisms for the election of boards of directors '*couciente electoral*'; (iii) rules for disclosing financial and non-financial information; (iv) distance voting; (v) protection of institutional investors; and (vi) parent-subsidiary rules.

Interviewee A12 argued that regulations, laws or voluntary codes may help to create an effective business environment and good corporate governance, at least in developing countries such as Colombia. Private-led initiatives preceded and even shaped public laws. From the information provided by the interviewees it can be inferred that they rank rules, principles and corporate governance standards according to their knowledge and experience. For example the corporate governance rules listed by Interviewee A20 above, focus on a narrow view, as those rules are basic in the relationship between management and a company's owners or shareholders.

According to all the interviewees the Colombian Confederation of Chambers of Commerce (Confecámaras) has been a leading organisation encouraging the implementation of corporate governance in the country. At the beginning of 2001, Confecámaras supported by CAF, IFC, CIPE and OECD, started to promote the OECD Principles of Corporate governance in Colombia and Interviewees A8 (regulator) and A12 (auditor) mentioned that the objective was to create an awareness of the importance of corporate governance for the economic development of the country.

Interviewee A13 (Independent director), noted that in May 2001 Colombia adopted a systematic approach to encourage corporate governance in the capital markets. All the regulators believed that the legal approach given by Resolution 275, June 2001 has both strengths and weaknesses. One of the advantages is that the introduction of corporate governance requires a shared responsibility between investors, companies and supervisors.

Some aspects of Resolution 275/2001 deal with the protection of stakeholders' rights as the principal government objective was to ensure that companies seeking to attract investment from pension funds were governed in a way that the funds invested were not at risk. Additionally companies wanting to attract investment from pension funds opted to comply with the regulation as a sign that they were creditable to receive funds from institutional investors. This is to say companies may be abiding by resolution 275 to show their legitimacy to one particular stakeholder – institutional investors.

However, Interviewee A7 (Ex-company director) noted a positive aspect of Resolution 275 and argued that it did not establish guidelines of what was considered "good" governance practice and that the broad language used made every practice acceptable. She also pointed as the requirement to include the governance provisions in company by-laws resulted in some company corporate governance codes consisting merely of a long description of these by-laws or just duplicated corporate law. In this respect companies may adopt corporate governance provisions just to be seen as legitimate organisations when in fact they may not really care about corporate governance in practice.

According to an independent director (Interviewee A13) and a senior lecturer (Interviewee A20) at the end of 2001, in response to resolution 275, Confecámaras, formed a private sector committee to establish a general benchmark code on corporate governance; both A13 and A20were members of that committee. The code was based on the OECD Principles and included practices taken from developed country legal systems. Interviewee A8 (regulator) described the building of the Confecámaras' code in the following terms:

> "The inspiration came directly from CIPE; they knew the importance of having a best practice code to promote corporate governance. The challenge was creating a consensus within the private sector because the concept of governance was completely unknown. Resolution 275 created at that time a negative reaction in some Colombian business associations; for this reason it was agreed with the Superintendence of Finance that the government should not be part of the committee to create the code".

Interviewee A13 (independent director) explained a program by BVC and IADB at the end of 2002 to strengthen corporate governance and the Colombian Capital markets. He noted:

> "The objectives were to improve disclosure of financial information and establish more effective requirements for corporate governance of all firms that traded on the Colombian Stock Exchange (BVC)".

Since then the BVC has played a leading role in the promotion of corporate governance within listed companies. The BVC plays a regulator role and as such the regulators interviewed promote corporate governance only within a narrow approach as the BVC is the entity that oversees listed companies in the country; therefore rules are addressed primarily to the relationship between managers and shareholders who are not involve in the daily running of the company they have invested in. For listed companies accountability is also mostly from board members to shareholders according to Interviewees A9 and A10. Nevertheless, the BVC recently has been promoting the implementation of corporate governance in all sorts of companies independently, whether listed or not.

According to Interviewees A13 (Independent director) and A20 (senior lecturer), the new Securities Market Law (Law 964), created a complete set of corporate governance rules and Interviewee E6 (regulator) stated:

> "Once the Securities Market Law was approved, in June 2005, the required step was to create a governance standard for the elements that were not included in the law. Resolution 275 lacks establishing a benchmark and the approach of corporate governance requires more cultural developments and market incentives…..It was realized that a 'comply or explain' system could help the regulator to achieve two important objectives: create consensus within the private sector through the development of a best-practice code, and encourage the self-regulatory vision of corporate governance in the market".

Interviewee A16 (senior lecturer) agreed with this view and declared:

> "It was a step forward to promote voluntary implementation in the capital market and create awareness within the investor community about the importance of corporate governance. Resolution 275 helped to open the discussion and analysis about corporate governance, and this assists companies to understand the benefits of implementing best practices".

Interviewees A8, A12, A13 and A17 mentioned that, six years after the successful introduction of Resolution 275 in 2001, the economic and political environment for corporate governance had changed as it was then necessary to adapt the model to the economic realities of the Colombian capital markets. For these reasons a new committee was formed and this committee issued the actual Colombian corporate governance code named *'Codigo Pais'* – The Country Code. Interviewees A9 and A10 (regulators) identify the *Country Code* as a common effort between the government and the private sector as Interviewee A10 explains:

> "The *Country Code* was conceived as a document that gathered a series of voluntary recommendations accorded by consensus and it was intended not only to unify the different standards of the market, but to really elevate them, in order to eliminate asymmetries created by past regulation that only make obligatory these measures to companies wanting to receive investment from institutional investors [Pension Funds]. The Colombian experience demonstrates that the elaboration of standards in a consensus-building fashion generates the necessary conviction and commitment among target organisations".

Interviewee A13 (Independent director) explained that the model chosen was 'comply or explain' and is organised in four chapters and includes forty-one practices. Interviewee A16 (senior lecturer) mentioned that the document required a long process of negotiation and intense work from the Superintendence of Finance that led the process by the committee. The Superintendence received help from CAF that hired an international consultant and publicised the results of the document. Interviewee A13 (Independent director) explained:

> "The code is mainly based on practices included in the Andean Corporate Governance Code issued by CAF in 2006. However, during meetings, every committee member presented arguments and proposed new practices to adapt the *Country Code* to Colombian realities. Special consideration was given to other national codes, such as the OECD White Paper on Corporate Governance in Latin America, as well as country experiences of Mexico, Peru, Spain and the UK".

The *Country Code* is voluntarily adopted by securities issuers, who report their adherence to its measures. However, in the case of non compliance with any practice, companies do not have to report their reasons. Interviewee A20 (senior lecturer) described three elements of the code:

(i) It is completely voluntary; every company can adopt its own model of corporate governance using the code;

(ii) The Superintendence of Finance requires companies to make annual public disclosures of their corporate governance practices

'Explaining' is voluntary; there is no obligation for companies' to report reasons for non compliance with any of the practices. However, the disclosure requirement is supposed to create a strong incentive to improve corporate governance practices by Colombian securities issuers.

The Colombian *Código País*, unlike other corporate governance initiatives in the country is aimed at a broader group of stakeholders, and not just to the relationship between managers and owners. The document refers to three kinds of relationships that may be addressed by the principles: the relationship between managers and shareholders; majority and minority shareholders; and the organisation and its stakeholders. Equally, it is expected that the corporate governance structures of companies will generate accountability, responsibility ant transparency; and at the same time promote 'stability, security and truth'. Therefore, it is possible that, there are those who still believe that corporate governance is about managers and owners only and not wider stakeholders. However, the most recent corporate governance approach in Colombia is supporting a broad focus with accountability to all stakeholders; also organisations are advised to adopt the principles if they want to legitimise their activities. Nevertheless, most of the interviewees agree that a change of culture is needed to achieve this new corporate governance approach.

6.3 Stakeholders' perspectives

Company supervisors, among others, in the country have started to recommend the adoption of corporate governance to all kinds of companies; the focus has moved beyond listed companies and has taken an approach close to a stakeholder view; in most cases this is accepting the idea that shareholders are just another stakeholder group. Interviewees also suggested that companies have the intention to show accountability to a wider range of stakeholders. According to Interviewee A8 (regulator), Colombia has generated a great awareness of what it means to implement Corporate Governance principles, and today many organisations have decided to add such guidelines in addition to listed companies and entities under the supervision of the Superintendence of Finance, which have a legal obligation to do so.

The supporters of a more inclusive approach to stakeholders of an organisation (Interviewees A1, A3, A13, A15, and A21) regard shareholders as just one of a number of important stakeholders groups such as employees customers, suppliers, government and the local community, that have a financial interest in, and are affected by, that company's success or failure. According to Interviewee A13 (Independent director):

> "In the same way that a company owes especial duties to its investors, it equally has different duties to various stakeholders groups"

Likewise, Interviewee A3 (company director) and Interviewee A15 (Independent director) mentioned that organisations and their managers have a special obligation to ensure that the shareholders receive a "fair" return on their investment; but organisations also have special obligations to other stakeholders, which go above and beyond those required by law. Interviewee A15 also stated that if there is a conflict of interest between the shareholders and stakeholders, the demands of some of them must be scarified in order to fulfil basic obligations to other stakeholders.

Generally, most interviewees agreed that the corporate governance framework should include mechanisms to encourage the participation of stakeholders in the long-term future of organisations. To achieve these, stakeholders need to be aware of their rights and responsibilities. This is evidence of a broad view of corporate governance in engaging stakeholders, and making them aware of their rights to hold organisations accountable and to demand legitimacy. Accordingly, Interviewee A17 (Senior lecturer) pointed out:

> "Stakeholders have the power to demand certain behaviours of companies in matters such as environmental issues, labour rights, responsible investment and the supply of safe products and services".

From the view expressed by a group of interviewees (A1, A2, A3, A4, A5, A13, A14, A17, A20 and A21) it is possible to infer that they show some agreement with the idea that organisations are increasingly called to take into account the concerns of a wider group of stakeholders that may be affected by the organisations' activities; this to some extent answers the first research question of whether corporate governance is viewed from a broad stakeholder perspective. It also accepted that stakeholders have a legitimate interest in the organisation's business and products because they have a statutory requirement to do so on behalf of the public good. This is a signal of the trend to engage stakeholders in corporate governance, and also seeing the implementation of good practices as a way to give legitimacy to the activities of a company. Equally, this refers to the third research question of whether organisations in the region implement corporate governance because they want to legitimate their activities. This view agrees with Mitchell *et al.* (1997) who defined legitimacy as the extent to which an organisation's relationship with its stakeholders is socially accepted and expected.

6.4 Corporate governance factors

Corporate governance has been defined in many different ways around the world, and it is no different in the Andean region. In this section the evidence from the interviewees is provides definitions that range from a narrow view to a much broader approach to those who even take a CSR focus. For example, this section shows that some interviewees concentrate narrowly on owners' concerns and give little attention to legitimacy or accountability to stakeholders. Others focus not just on owners, but also on the interests of other stakeholders such as creditors, investors, analysts, auditors, and corporate regulators. Such wider concerns reflect a stakeholder approach. In addition, other parties may be involved in corporate relationships such as unions, trade associations, government and even political groups reflecting a stakeholder focus and the importance of a company having accountability towards all stakeholders. These interviewees have more a CSR focus and for them company accountability and legitimacy towards stakeholders is very important.

A7, A8, A9, A12 interviewees purely repeated Cadbury (1992) and defined corporate governance as the system by which companies are directed and controlled. For example Interviewee A7 (regulator) stated:

> "Corporate governance should not be seen just as a compilation of best practice recommendations for having healthy companies, or for making it possible for a company to go public, or to help organisations have the best international standards. Corporate governance is the set of rules through which a company is directed and controlled, either individually or within an economic group".

A group of interviewees (A1, A2, A3, A5, A12, A15, A17, and A20), agreed that corporate governance covers the general set of principles, customs, regulations, habits, and laws that determine the manner in which a company should be run but with a broad focus. For example Interviewee A15 (Independent director) gave the following definition:

> "Corporate governance is the set of rules and practices that govern the relationship between the managers and shareholders of organisations, as well as stakeholders like employees and creditors; it contributes to growth and financial stability by underpinning market confidence, financial market integrity and economic efficiency".

Interviewees A1, A3, A5, A15 and A20 focus on the processes used to direct and manage the business and affairs of a company to provide an explanation about corporate governance and its implementation. This focus is narrower corporate governance view where greater importance is given to shareholders.

According to Interviewees A9 and A10, who are both regulators, better corporate governance may result from effective accountability, which introduces discipline to management and facilitates the exercise of shareholders' rights. Officially, managers are held accountable for their performance, at least at the end of each year. They must submit an annual report to the General Assembly. The report should detail the stewardship of the business from a legal, economic and administrative point of view. Interviewee A9 mentioned that is for the Assembly to approve the report. The Superintendence of Finance needs to ensure that the process of accountability is developed. A narrow corporate governance view is mostly shared by regulators; they generally believe that companies are primarily accountable to their shareholders or owners.

Interviewees A6, A16, A18, and A20 believe that corporate governance provides a structure that works for the benefit of every one concerned by ensuring that a company adheres to acceptable ethical standards and best practices as well. Interviewees A1, A3, A6, A17, A18, and A21 also added that the governance framework is there to encourage the efficient use of resources and to require accountability by management to align the interest of individuals, companies and society. The incentive to companies, and to those who own and manage them, to adopt corporate governance standards is that these standards may help them achieve their corporate aims and to attract investment. The incentive for the adoption by state-owned enterprises is that these standards may strengthen the economy and discourage fraud and mismanagement. Viewed as such, corporate governance represents a centre upon which companies' actions and the collection of stakeholder interests can be balanced. Also some consideration is showed of the rights of other stakeholders. For example, Interviewee A15, an Independent director, provides the following explanation:

> "The implementation of principles, rules or standards for the management of companies, allows the scope of its corporate objectives and its ongoing evaluation to provide a platform for protecting investors. It is a set of mechanisms and tools available to the directors of a company enabling them to maximize corporate and shareholder value. Corporate governance recognises and makes possible the exercise of the rights of shareholders, investors and others with an interest in the company, and establishes duties and responsibilities of boards in the attainment of such rights".

Equally, Interviewee A20 (Post grad student) defined corporate governance as:

> "The internal system set by the shareholders to manage and control their company with transparency, objectivity, professionalism and fairness, to protect and increase successfully, over time, the value of their investment and protect their shareholders. In short, it is the act of taking morally responsible rules to increase the value of their investment, without abandoning other sources of success, and their stakeholders".

Additionally, Interviewees A3, A5, A12, and A15 mentioned the relationship between corporate governance and social responsibility issues. Interviewees A3, A5, A6, and A18 argued that corporate governance and CSR can be dealt with together. For example Interviewee A18 (senior lecturer) mentioned that a company may have a well formed programme in place, which would probably take care of most CSR issues. Equally, Interviewee A5 (company director) expressed her view about corporate governance as follows:

> "It is a subject of growing interest in the world and new in the region, good corporate governance practices can contribute to increased competitiveness may also be important for mobilising financial resources and development of clusters. The growing attention to other business-related agents such as suppliers, customers, community, etc. is taken also as a bridge to implement corporate social responsibility".

The definitions given by the interviewees showed a constant pattern where the regulators generally expressed a narrow view, seeing corporate governance only related to owners/shareholders and their managers and possibly extended just to include minority shareholders. There is also the view of company directors who have a wider corporate governance focus as they included all company stakeholders in their corporate definition. There are also those who have CSR focus, their view also includes the social responsibility organisations have towards their all stakeholders; this group includes company outsiders, specifically those Group (4) who are academics, students and investors, also some independent and company directors share this view.

The breakdown of issues that featured most prominently in the definition of corporate governance given by the interviewees is shown in Table 6.2.

Table 6.2 Summary of issues used to define corporate governance

No	List of issues	No of interviewees*	%
1	Provides a way to discharge a company's social responsibility.	12	57.1
2	The disclosure of relevant information and protection of minority shareholders.	11	52.4
3	Recognises and makes possible the exercise of stakeholders' rights.	10	47.6
4	Formal and informal that govern a company	9	42.9
5	A set of mechanisms and tools for decision-making available to the directors of a company.	8	38.1
6	Transparency and accountability to stakeholders.	7	33.3
7	The set of rules through which a company is directed and controlled.	6	28.6
8	The act of taking morally responsible rules to increase the value of shareholders' investment without abandoning the interest of company's stakeholders.	6	28.6
9	A way to enhance company's legitimacy	5	23.8
10	A platform for protecting investors.	4	19.0

Note: this table summarises some of the statements used by Colombian interviewees to express a meaning for corporate governance.

*No of interviewees correspond to the number of the individuals within the 21 who took part in the semi-structure interviews that mention each specific issue the percentage correspond to the proportion of those who mention the issue in relation to the 21 individuals interviewed.

These issues are broadly consistent with the definitions of corporate governance, stakeholders, accountability and legitimacy introduced in chapters 2 and 4, and suggests that interviewees' notions on these issues are consistent with widely held views of corporate governance from a stakeholder perspective; a mechanism for discargig an organisation's social responsibility; and that corporate governance should promote disclosure and transparency. Essentially, the views of the majority of the interviewees reflect the incorporation of social responsibility into the corporate governance framework, attempting to develop organisations' strategies that meet the approval of companies' stakeholders and commitments to organisations' responsibility and accountability.

6.4.1 Attitude towards corporate governance

Interviewees A3, A8, A15, A17, A18 and A21 mentioned that one obstacle to the implementation of corporate governance standards was the culture of non-disclosure by individuals. According to Interviewee A3 (Company director) people do not believe they must disclose information about their businesses, even if it is non-confidential information, Interviewee A3 mentioned:

> "This occurs in all areas, for example individuals wishing to have good practices if told they are required to submit a report even said that they will be graded according to the report content and characteristics, they are not interested because there is not a culture to meet standards this also makes it difficult for attracting foreign investment to the country. Thus, it is advisable to adjust cultural issues first".

Equally, Interviewee A19 (Senior lecturer) argued:

> "I believe that Latinos have a culture very difficult for these issues and this especially for the Andean countries where I think the issue is complicated".

However, Interviewee A6 (Company director) mentioned that there are some companies that have a culture of transparency, and the market is pushing in that direction, and this will raise company values (share values) based on the consistency of its management, and the adoption of best practices. Similarly, Interviewee A4 (Company director) stated:

> "The market should be responsible. In Colombia we need to have responsible consumers, which in turn will serve as a control for organisations to be accountable. In other words to have good corporate governance, it is the market or the consumer who ultimately rewards organisations who act responsibly, those organisations whose management have good practices".

According to Interviewees A1, A3, A4, A8 and A14, awareness on the need to implement corporate governance practices in Colombian companies has grown over the last few decades, and the issue is now much better received. Colombia, as with other Andean countries, possesses a unique set of corporate governance and market characteristic such as: a predominance of conglomerates and highly-concentrated, family-based ownership structures and the domestic capital market being at an early stage of development. This poses a challenge to attracting investors and elevates the importance of governance practices such as ensuring that minority shareholders are confident enough to invest in listed companies by enhancing the protection of their rights and interests. Stories of successful privatisations linked with good corporate governance, such as the case of ECOPETROL, were brought up by the interviewees.

Interviewees A3, A6, A12, A13, A16, A17 and A21 mentioned the importance of the work of those promoting good practices in the country and in the Andean region. There have been diverse efforts to convince companies and individuals to engage with all their stakeholders and the importance of accountability and legitimating organisations activities. In this regard, Interviewee A17 (regulator) pointed out:

> "In Colombia the culture to hold companies accountable does not exist. Currently there are some initiatives to make individuals aware of their rights; the aim is to provide tools and training to the final consumer to learn to look for companies that meet certain standards such as environmental and social protection, respect employees rights, obey the rules, pay in time their dues, prepare to disclose information and so on".

The current knowledge and interest in corporate governance has expanded, contrary to the situation in 2001. At that time, according to Interviewees A2, A7, A12, A13 and A20 there were no codes of corporate governance in the Colombian market and the concept of corporate governance was unknown to the majority of company managers. Interviewee A2 (Company director) noted that the first corporate governance survey in 2001 asked companies about their practices to find the extent to which they complied with international corporate governance standards; it showed that the average company scored just 34 out of 100. Interviewee A13 (Independent director) argued that the 2001 survey showed some good features such as CEO and chairman duality, board size and board independence; but it showed that more diffusion of the topic was needed. Larger firms were the most enlightened on the subject, however, their practices were not ideal, but at least they had a corporate governance code, board committees, and audit function. Further, there was a reaction to the scandals of large corporations such as Enron, Parmalat and WorldCom, among others as Interviewee A13 expressed:

> "These scandals increased people's mistrust in companies; so many times humanity only learns after looking at painful episodes. Anyway here in Colombia, little by little, at a rather slow pace, corporate governance practices are getting through to the business sector".

Equally, circumstances external to the country are contributing to achieving a change in stakeholders' mentality as Interviewee A5 (company director) mentioned:

> "Stakeholders do not press [for better governance] because we are not accustomed to do it, but gradually, as a result of globalisation pressures, interest groups are learning from those in other parts of the globe".

6.4.2 Voluntary versus mandatory corporate governance codes

Regarding the willingness of organisations to adopt corporate governance some interviewees argue that a significant part of the Colombian corporate governance system is built upon voluntary standards. Colombia, like most Latin American countries, uses a 'comply or explain' mechanism. Basic corporate governance rules (such as elect annually a board of directors, the election of board member should be done under specific rules, the board should elect a chairperson, and others) contains both mandatory and voluntary provisions, but a second layer of corporate governance legislation is premised only on voluntary compliance (such as having a corporate governance code, independent members on the board, board committees, among others). According to Interviewees A7, A12 and A18 this requires appropriate and effective legal, regulatory and institutional foundations. A variety of factors, including business law and accounting standards can affect market integrity and overall economic performance. Regulators need to be aware of legal and institutional impediments to sound corporate governance, and to take steps to promote the effective foundations for corporate governance where it is within their legal authority to do so. Interviewee A18 (senior lecturer) reflected this view when he stated that:

> "Corporate governance is a dimension of regulation and / or self-regulation which has an effect on access to capital and financing, but also affects relations with other stakeholders".

Likewise, Interviewees A11, A14, A16, and A20 argued that more than regulations, laws, or voluntary codes, enforcement is important in creating an effective business environment and good corporate governance, at least in developing countries and transition economies. Equally, interviewees maintained that a framework was needed to help explain the impact on corporate governance when rules are not enforced, and what can be done to improve corporate governance in weak enforcement environments. For example Interviewee A20 (senior lecturer) pointed out that:

> "The Challenge of the new code, as in most emerging economies, is related to enforcement and how to accommodate new initiatives with pre-existing regulations. The new model of corporate governance should strengthen the Colombian capital markets, bring in new issuers to the market and facilitate local and international investment".

In relation to the regulatory framework, Interviewee A10 (Independent director) explained that in Colombia the private sector has played an active leadership role with the regulator with voluntary codes that are '*self-regulatory*' frameworks that are better accepted when designed by those who help to implement them. Thus, the private sector is positioned as the main actor since a regulator-led code might generate reluctance from the companies concerned. In this respect Interviewee E1 (company director) pointed out:

> "The code is a very good document that reflects the working conditions and commitments to society, but there is no entity or authority enforcing compliance, and the only one who can come to claim any breach is the shareholder".

According to Interviewee A9 (regulator), in countries such as Colombia amid a pattern of concentrated ownership structures where majority shareholders have significant influence on boards and may extract private benefits at the expense of minority owners corporate governance should aim to protect shareholders rights, enhance disclosure and transparency, facilitate effective functioning of the board and provide an efficient legal and regulatory enforcement framework. This narrow corporate governance focus is addressed with a mix of company law, stock exchange listing rules and self-regulatory codes.

Nevertheless, a 'comply or explain' approach adopted in Colombia differs to some degree from the system used in others parts of the world. As explained by Interviewee A8 (regulator), the current Colombian corporate governance code prescribes a '*voluntary explanation*' model in which a company may merely answer "no" if it does not implement a specific measure. Companies are asked to disclose whether they comply or not with each of the measures of the Code. If they comply with the measure they are required to provide an explanation describing the manner and mechanisms by which compliance is ensured. If they are not complying with the measure, companies do not have to explain why. Interviewee A13 (Independent director) pointed out that, in this case, the active involvement of the private sector in the process of issuing a code led to the consensus of the voluntary approach, but the fact is that companies can choose to disclose or not where it complies or departs from the code's recommendations. As mentioned above the decision to voluntarily adopt corporate governance has been influenced by dimensions such as ownership issues, capital structure, and market requirements. Voluntary mechanisms allow organisations to decide individually regarding their individual needs and give them flexibility to adjust to best practices and new developments. Interviewees A1, A3, A4, A7, A10, A13, A16, A19, and A21 agreed that voluntary governance recommendations should go beyond the minimum legal and regulatory requirements by providing guidance on issues for which it is not possible to regulate, or to be more oriented toward companies not covered by the law. Interviewee A7 (researcher) pointed out that:

> "There should be a special emphasis on enforcement aimed to facilitate a real implementation for companies and improve the level of information required to assess corporate governance issues for investors, rating agencies and the media".

Interviewees A7, A9, 10, and A11 talked about the extent to which Colombian companies voluntarily adopt corporate governance standards, and pointed out that ownership structure, investment opportunities, and external financing are influential determinants of governance practices and that the strength of their influence depends in part on the country's legal environment. For example interviewee A10 (regulator) mentioned:

> "Corporate governance faces a big problem, as there is not a strong enforcement system on corporate governance standards, companies can decide what standards to comply with and what not to. This is why we are trying to sell to organisations under the Superintendence supervision the idea that even though corporate governance principles are not compulsory, complying with them may be beneficial for the company. And if a company does not comply it might be punished by the market. For example, customers may choose to be associated only with those organisations that apply good corporate governance practices. The risk rating agencies are now reporting those with good corporate governance and those without".

Mandatory rules may offer stronger protection to stakeholders, especially investors, but they are inherently inflexible and not appropriate for all companies. Voluntary rules, on the other hand, raise questions of compliance. The explanation for non-compliance with a code provision must be reasonable. The regulators interviewed recognised that non-compliance may be justified in particular circumstances if good governance can be achieved by other means. A clear and well-founded explanation which supports actions to enhance the long-term value of the company should be acceptable to stakeholders.

Others, such as Interviewee A7 (Ex-company director), argued that a partially-enabling governance regime, and particularly one with mandatory rules for listed companies and voluntary for any other organisations, is likely to yield high levels of compliance, and awareness of the good parts of the system is needed. She pointed out:

> "I think for listed companies it must be mandatory, for other companies it must be voluntary. I think the important thing is the awareness among businesses of the benefits it brings to adopt corporate governance practices. But I think that more legislation is not necessary, as I believe there is sufficient legislation in terms of reporting information, it would be better to undertake a campaign to raise awareness or change the culture".

Interviewees A3, A4, A15, and A19 believed that banks can also effectively enforce corporate governance standards in developing economies, such as Colombia. After family and friends, local banks are often the primary source of capital for businesses in developing countries. As a result, lending institutions may have their own requirements much like stock exchanges. In this respect interviewee A15 (Independent director) stated:

> "I would say that there should be a law or guideline for financial institutions to carefully analyse and monitor corporate governance, since they are the largest source of financing for entrepreneurs, this will make most businesses implement these practices, and would work better than if more regulations were introduced. Just as the Superintendence of Finance monitors financial institutions, the Superintendence of Companies should monitor companies through the banks".

According to Interviewees A1, A3, A12, A13, A14, A15 A20 and A21 companies in the country are voluntarily adopting corporate governance standards and this may be seen as management strategies to legitimate their activities. There also those mandatory corporate governance issues which companies need to comply with if they want to maintain their legitimacy. It is also suggested from the literature that has used legitimacy theory (Dowling and Pfeffer, 1975; Ashoforth and Gibbs, 1990; DiMaggio and Powell, 1991; Deegan, 2002) that companies could adopt voluntary corporate governance mechanism to manage stakeholders' perceptions or in response to, or anticipation of, threats from stakeholders or the public to the company's legitimacy.

6.5 Corporate governance in SMEs and family-owned businesses

An additional constraint has been posted by the high number of small business and family-owned business in the country. Interviewee A8 (company director) cited that SMEs generally take the form of private companies owned by small number of shareholders, and often have less than 50 employees. Such companies are usually family-owned run by family members where the authority and power are normally held by an individual usually the major shareholder. For that reason the owners commonly consider themselves as running their personal properties. Other common characteristics of SMEs are dealing with particular family issues, including dispute resolution and succession planning. Promoters of corporate governance implementation have been supporting the adoption of good principles by SMEs. However, some interviewees questioned whether owners and managers of SMEs are prepared to implement corporate governance in their organisations. Interviewee A14 (Independent director) mentioned that many business owners and directors of small and medium seized companies, as well executive and management teems question why they opt to choose to introduce new systems and internal rules which impose limits in the way they do business. Nevertheless, several interviewees believed that corporate governance plays an important role for SMEs, and governance frameworks determine the capacity of small firms to raise capital. Other key benefits to SMEs include better and stronger system of internal control and accountability, transparency, strategic vision through participation of outside experts on the board, allowing the owner to focus more on strategic directions and expansion of business than day to day operations, and the ability to attract better managers. Interviewees also mentioned that corporate governance can be viewed as a mechanism to mobilise and combine resources and competences.

However, Interviewees A2, A15 and A19 argued that because there is not a culture of group ownership in the country and that most Colombians are individualist, the adoption of corporate governance by SMEs face different challenges, such as a lack of awareness of the significance of corporate governance structures, and if there is awareness, there is wide spread aversion to adopting these practices because of the high cost of implementation. For example Interviewee A15 explained:

> "The government and some entities have suggested that SMEs, instead of borrowing money from banks and speculators, should seek resources in the capital market by issuing convertible bonds or shares. This opening up of a company is not going to be easy because the SME entrepreneurs are closed minded persons who prefer to borrow from banks and not to allow other shareholders to participate in their companies. For this there is much scepticism that such a strategy will work in Colombia".

Equally, Interviewees A7 and A16 argued that the capital structure plays a very important part the decision to implement corporate governance; because, for a businessperson who owns a majority stake, there is no incentive to implement corporate governance because most Colombian businesses have a closed capital structure. They are limited liability family businesses controlled by a majority shareholder. In Colombia over 90% of businesses are small and medium enterprises most of them family-owned businesses. For example, Interviewee A7 (Ex-company director) mentioned:

> "Corporate governance is promoted for different types of companies, partly because very few companies are listed on the stock exchange and issues such as disclosure and structure of boards pose some difficulties due to the size and number of listed companies; but the large number of family businesses in the country means they are important in the role they play in the economy. Corporate governance has been expanded to family businesses, as I said, because of the country's corporate structure".

According to Interviewee A4 (Company director) the activities promoting corporate governance practices are explaining to people what it is about and showing the benefits to companies and stakeholders; these are the factors that really change attitudes towards corporate governance. Interviewee A4 mentioned that, today, more than one hundred thousand employees in her company had heard about corporate governance, knew what it was about, and that, even though they may not be directly involved in the subject, they are no longer intimidated by the subject. She explained:

> "At first there were some difficulties, the issue was too exotic for a company which was not obliged to implement it, and a company basically of technicians and operators, with operation centres in many parts of the country. These centres are very particular in their culture, and to sell to them corporate governance rules, shareholder protection for minority investors, rules of transparency, code of ethics, ways of disclosing information, and the need to disclose that information, and the way to interact with our stakeholders seemed particularly difficult".

Obviously, the above relates to the broad view of corporate governance that is seen as way to engage with all the stakeholders of a company. Within this focus it is important to consider the extent to which organisations ought to take the interests of others in their decision-making processes. It has been suggested that stakeholders' claims cannot be ignored by an organisation, as ignoring them does not serve the organisation's interests and for some stakeholders interests are thought to form the foundation of corporate strategy itself. It is also argued that engaging with stakeholders shapes strategy around certain moral obligations to stakeholders.

Another additional issue mentioned by Interviewee A8 (regulator) is that Confecámaras, CIPE and CAF have been very important in changing the views that companies have about corporate governance, and in helping raise organisations' corporate governance standards. The Superintendence of Finances and the Superintendence of Companies both have offices in charge of overseeing corporate governance issues; Confecámaras and BVC have programs exclusively working on corporate governance. These factors have resulted in both private and public sector stakeholders understanding the benefits of good governance. Equally, Interviewee A21 (postgraduate student), mentioned that the diversity and large number of non-listed companies and SMEs in the country made it difficult to obtain any statistics on the impact of the SME code, but that, some analysis showed that important progress had been made in corporate governance in family-owned business. Interviewee A11 (regulator) also described the situation:

> "Over the last few years, some companies have started implementing practices to improve their governance. Regarding family-owned businesses, which are most Colombian companies, several family protocols have been adopted. In the Superintendence of Companies, it is seen as a trend that is changing significantly the relationships between business, family and equity holders".

Interviewees A2, A5 and A12 mentioned trade conditions as a limitation to the development of corporate governance in Colombia, whereby commercial partners abroad do not pressurise companies to comply with the country code. As Interviewee A15 (Independent director) explained:

> "Another thing that makes it difficult is that most of the exports of manufactured goods are to Venezuela, and Venezuela is well below Colombia in corporate governance standards. Normally Venezuelan customers only make minimal requirements on the compliance of corporate governance issues, and exports to the U.S. and Europe are more in commodities where demand is related to social responsibility or human rights issues than to corporate governance".

Another important issue mentioned by the Interviewees A1, A7, A16 and A20 is the benefit that the country obtains from corporate governance such as a strengthened economy, Interviewee A7 (Ex-company director) noted that it can also be a tool for socio-economic development, and Interviewee A1 (Company director) stated:

> "The benefits following the implementation of corporate governance practices are reflected in the improvement of the quality of the information presented to stakeholders. Stakeholders require measures to be implemented within the organisation to ensure compliance with requirements. These have helped to improved operational performance, establish controls, and enhance general knowledge of a company".

Overall, there appears to be a similar attitude towards the issue of corporate governance in Colombia. Most of the interviewees agree that there is a positive attitude towards the implementation of corporate principles, not just by listed companies, but also by family-owned businesses, SMEs, and state-owned enterprises. However, there are also different views about the relationship between corporate governance and CSR. Equally, the interviewees have suggested that there are companies wanting to implement corporate governance principles these reasons range from a desire to engage with stakeholders, to be accountable to company stakeholders and/or to legitimate company's activities.

Referring to the 2003 Corporate Governance Code for SMEs, interviewees A8, A7, A13, and E21 mentioned that the objective of the SME Code was to create basic tools for small and medium companies to help them formalise their own corporate governance systems. More than just creating a benchmark for corporate governance, regulators focused on understanding the governance problems in SMEs and in offering mechanisms to solve them. In addition accountability to a broad range of stakeholders such as creditors, suppliers, customers and employees is also promoted.

6.6 State-Owned Enterprises (SOEs) versus non-SOEs

All the interviewees suggested that the principles of corporate governance apply equally to all organisations. However, private companies (listed or non-listed), which are subject to a common statutory framework and share similar objectives, legal and managerial structures, and external reporting responsibilities are basically different from State-Own Enterprises (SOE). SOEs are subject to an array of different legislative requirements and are significantly more diverse in term of their structure, scope and objectives. Attitudes about state-owned enterprises have changed especially in energy, telecommunications, and utility industries. Interviewee A1 (Company director) mentioned that the dominant idea was that the government's role was not to run business directly but to create conditions that foster growth of businesses. It was contended that reliance on market forces would improve efficiency and bring in private investment which would in turn create greater economic growth. The result was a wave of privatisation of state-owned enterprises and the opening of a number of otherwise reserved sectors to private enterprises.

Interviewees A1, A2, A3, A4, A7, A8, A10, A16, A18, and A20 also believed that SOEs have to satisfy a more complex set of political, economic and social objectives than a commercial company, and are thus subject to a different set of external constraints and influences. Equally, SOEs face more challenges than private companies, as they usually cannot have their boards or management removed by a takeover or proxy contest, and they cannot go bankrupt. In addition, they may have very low-cost subsidised loans. Thus, the incentive for board members and managers to maximise the value of the organisation is reduced. Also, performance may be hindered by political interference, poorly defined non-commercial objectives and absence of transparency. For example, Interviewee A8 (Regulator) mentioned:

> "It is recommended that corporate governance is not exclusive to the private sector; its implementation must begin in state-owned organisations. They, in my opinion, are the most urgently needed. Because obviously for private companies the first objective is to generate profit, or generate wealth. State entities are formed to provide a social service, serving the community, etc. and efficiency may be achieved through good corporate governance practices".

Interviewees A1, A4 and A20 also suggested that when organisations take into account the interests of a range of stakeholders, not just the state as owner, that organisations resources are used efficiently. The interviewees, equally, pointed out that those holding public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

The literature suggests that this focus on a wider range of stakeholders, and even more in the case of the Colombian economy where markets and institutions are not perfect and competitive, can lead to a better allocation of resources than the narrow view (Zedek, 2006).

Interviewees A1, A2, A3, A6, A13, A16, A19 and A21 also agreed that the government has taken into account suggestions to strengthen corporate governance. Two SOEs were constantly mentioned by the interviewees as good examples of organisations adopting corporate governance in the country; ECOPETROL an oil exploration and refining company, and ISA (Interconexion Electrica, the country's biggest electricity transporter). These two organisations have strengthened their corporate governance standards after the government decided to sell just over 10% of the capital in both companies to private investors. The interviewees also mentioned EPM (Empresas Publicas de Medellin) the organisation running utilities in the county of Medellin, Colombia's second largest city. Medellin's local government has signed an agreement that allows Medellin's majority owner to sit at EPM's board of directors; however, the major owner only has voice on board decisions. This is different from the boards of other utility organisations around the country where majors have a voice and additionally are allowed to vote on board decisions. Most of the interviewees believe that corporate governance helps to remove cronyism and favouritism, instead of facilitating an open exchange between the private sector and the government.

Interviewee A2 mentioned that a company in the Communications Ministry, which is the majority shareholders, has given up to its right to the highest number of seats on the board for directors in exchange of having a greater number of independent directors.

There are also a good number of other governmental organisations in the country that are following the trend of strengthening their corporate governance structures. Some interviewees suggested that this is a response to stakeholder groups' pressure for more transparency. Some organisations have expanded their operations to neighbouring countries, therefore are accountable to wider group of stakeholders. There are also organisations such as EMCALI, a utility company, which is trying to recover from bankruptcy, a long period of bad administration and corruption, and the current political administration decided to adopt corporate governance principles in order to regain its constituency trust and legitimacy. It may be assumed that corporate governance is being used to achieve legitimacy for the activities of the organisation. The interviewees' views in this case are in line with Phillips (2003) arguments about managerial attention being given to legitimacy claims from stakeholders, who are morally justified by the responsibility that managers have to protect the interests of their organisations and their legitimate stakeholders.

6.7 Overlap of CSR and Corporate governance

Another issue pointed out by Interviewees A3, A4, A6, A16, A7, and A18 was the increasing worries about the impact of companies' activities on society. They cited that many companies have created so called corporate social responsibility (CSR) programmes that balance their operations with the concerns of external stakeholders such as customers, unions, local communities and governments. Social and environmental consequences are weighed against economic gains as companies must be aware that sound corporate governance practices are important in order for them to be considered ethical and socially responsible businesses. Many interviewees argued that the corporate governance agenda and the corporate social responsibility agenda are linked by the issue of ethics. Companies and governments want the public to believe that organisations are ethical but do not want new legal backing for tighter ethical behaviour. This focus is supported on the idea that organisation activities are judged to be the right thing to do. Also those activities are accepted by society. Interviewees believed that good business means more than just successful new product development and strong financial performance; commitment to the highest ethical standards is equally needed. By doing the right thing and operating with integrity and transparency, organisations build and maintain credibility and trust with their stakeholders. This, according to Suchman (1995) awards 'moral legitimacy' to the activities of an organisation. According to Interview A4 (Company director) "this may legitimate an organisation's existence". The focus of corporate governance is that of CSR, with the demand for organisations to be transparent, apply ethical standards and for justify company activities. Interviewee A3 (Company director) illustrated some of these issues such as:

> "The assumption is that corporate social responsibility, as well as being a duty, is something that a company can benefit from. This is not to be good, or being charitable, or be loved. If social responsibility is not achieved then the community might not be happy with the company, this makes it very difficult

> to develop business objectives. So what is projected to be socially responsible as well as fulfilling a company's obligations might generate a profitable enterprise".

It is clear that not always altruistic grounding will render legitimacy as Interviewee A4 also described the meaning of the issue for her organisation:

> "We began corporate governance implementation in 2004 and it has been nearly four long years around the issue of structuring, dissemination, implementation and internalisation of corporate governance. The other issue that parallels corporate governance, and many times people ask if it is part of corporate governance or whether corporate governance is part of it, is corporate social responsibility and today we already have a responsible structure for monitoring and disseminating all parts of our corporate social responsibility and what we think explains how is tied to corporate governance".

Interviewees A7, A9 and A10 agreed that organisations have a social responsibility, but that this should be distinguished from corporate governance, and that it was important for stakeholders to be aware of that. Interviewee A7 (company director) adopted a narrow view and explained:

> "I think those are two very different topics, social responsibility is a very important issue; but it is not the definition of corporate governance. I believe that corporate governance issues are related to disclosure, protection for minority shareholders, having independent members on the board; for me it is more to do with administration and information disclosure, CSR, to me is another matter".

Equally, Interviewee A15, an Independent director, believed that the misunderstanding on how people are dealing with the two issues are due to the speed that these issues are being introduced and in many cases there is not sufficient importance given to illustrate to people the meaning and implication of each issue separately, Interview A15 stated:

> "The information has been mishandled; it has been done so quickly that it has resulted in many people misunderstanding the issue. The media do not know very well to what it refers".

Some argued that companies may not be accountable just by behaving in a socially responsible way. For example, some interviewees believed that it took more than CSR for an organisation to be seen as a responsible company. These interviewees considered that, at minimum, organisations require a blend of business ethics, corporate governance and CSR policies to meet the accountability expectations of the public. For example Interviewee A1 (company manager) mentioned:

> "Some people think that corporate governance is about transparency and accountability but, for us, it is the umbrella that protects the whole issue of social responsibility because it is from there that we begin to determine what is going to be our behaviour towards all our stakeholders".

As an indication of the preference for a wider corporate governance approach which includes accountability and legitimacy, company directors mention the increasing interest in CSR issues, this as a consequence of the rising demand for accountability and growing pressure put on businesses to be more transparent in their actions to society and the environment. Among the interviewees there is also same agreement that these pressures are coming from sources such as: greater stakeholder awareness of corporate social and environmental behaviour; direct stakeholder pressures; and an increased sense of social responsibility.

6.8 Corporate governance structures

To answer the research questions it is necessary to understand the issues surrounding corporate governance, this requires an understanding of the ways in which companies are structured, how they are run, and how responsibilities are distributed among all the stakeholders involved. Equally, to evaluate the legitimacy of company activities it is important to know whether organisations are run ethically and efficiently. From a stakeholder approach, corporate governance has to do with the relationship between, directors, company management and stakeholders. In this arrangement, directors oversee management to advance the interests of all stakeholders.

6.8.1 Board of directors and board size

The interviewees defined the board of directors as the governing body of an organisation, elected by shareholders to represent their interests in managing the company. Especial importance was given to the way board members are elected. Board legitimacy may be strengthened through a selection, nomination or election process that ensures board members will have no interest other than those of other stakeholders. Elected board members may derive their legitimacy from a transparent election process and proof of their independence. There is some agreement that board members should be independent from management and from all significant shareholders, and represent the interests of all stakeholders. Truly independent board members will keep company management focused on the interests of stakeholders. Equally, the majority of interviewees seem to be aware of the idea that a board which includes members who are truly independent is more likely to be vigilant about the information disclosed and to replace quickly underperforming directors. It is also argued that board members should have two essential characteristics: legitimacy and credibility. The legitimacy is derived from their independence from management and commitment to stakeholders. The credibility centres on the board members collective expertise relevant to the specific issues and challenges of the organisation.

In general, interviewees believed that at the heart of every organisation is a board of directors in charge of the direction, supervision and control of the company's affairs. But they had different views about the roles and responsibilities of boards of directors. A view, shared by the majority of the interviewees, is that a board of directors is a group of people legally charged with responsibility for governing an organisation. Boards are also in charge of providing continuity for an organisation by setting up its strategy and legal existence. Equally, boards represent the organisation's point of view in relation with its products and services and promote them. Most of the interviewees believed that the board is primarily responsible to the company's owners or shareholders. However, they also shared the view that the board of directors' responsibility extends also to other stakeholders such as employees, creditors, customers, suppliers and government offices. Only few interviewees expressed the view that boards are exclusively accountable to shareholders or company owners.

Regarding the board of directors' size, some interviewees believed that large boards are better for company performance because they have a range of expertise to help make better decisions, and also may post a stronger opposition to a controlling CEO. However, some thought that a smaller board of directors functioned more effectively than a large board, as smaller boards have a greater participation by each board member, more effective and efficient decision-making and greater individual accountability.

The interviewees also explained the way board members discharge their accountability. For example, Interviewee A1 (company director) explained for her company:

> "The board is accountable to shareholders through an annual report to the Annual Meeting of shareholders. Also, because of the changes that the company has been through due to the privatisation of part of its capital there is a special auditor who reviews these reports and submits an annual special report to shareholders on audit work".

However, although annual reports are used to discharge accountability interviewees argued that the true value of this measure is not clear if those reports are not actually read. Most directors do not use alternative methods to account for their performance to their stakeholders. Moreover, they simply comply with the law in preparing their annual report, often producing poor quality reporting. As a result, the role of annual report and the degree of accountability of many company directors may be questioned. However, according to some interviewees, a good number of organisations are recognising the importance of company reports as a means to disclose company information, thus in addition to disclosing factual information, annual reports may be serve as public relations function. This, to some extent, is in agreement with the idea that the annual report is an important document in terms of the construction of an organisation's social image (Neimark, 1992).

Another issue mentioned by the majority of the interviewees were the limitations on the number of boards of which a director could be a member[35]. No director may serve on more than five other public company boards as explained by Interviewee A15:

> "Restrictions on board membership is five, no one can be an external director on more than five companies. But the limitation is only for listed companies, for non-profit companies there are no limits, closed capital companies are not required to have a board, therefore there is no limit".

The majority of the interviewees agreed that the board of directors is typically central to corporate governance. In relation to the need to have well structured boards, some interviewees argued that corporate governance and, in particular, the board of directors matters for corporate performance, market capitalisation, and to increase the value of the shares of a company, and also to improve the country's welfare. Interviewees A1, A4, A8, A10, A13, A15 and A20, cited that the board's directors act on behalf of investors who hold administrators accountable for the performance of the company.

[35] Market Law (Law 964, 2005)

6.8.2 Independent non-executive directors

Interviewees A4, A8, A10, A13 and A14 indicated that they are aware of the importance of having independent board members. The 'Country Code, The Andean Corporate Governance Code, and the Colombian regulation such as Law 964/2005, and the Commercial Code, recommend that organisations have at least a proportion of independent board members. Interviewee A13 quoted:

> "The legitimacy of the board of directors flows from the nomination and election process of independent board members".

Interviewee A14 pointed out the significance of a well structured board including independent members as he explained:

> "It is difficult to see a company grow orderly without strategic planning, or not having an appropriately structured board. But the board does not work if it's the same people doing the same things. Therefore it is necessary to have independent members".

Further, the interviewees indicated that the board of directors should have a good number (if possible the majority) of directors who meet the criteria for independence required by the corporate governance regulation[36]. The nominations committee, or the organ designed to do it, should assess the candidates elected to be part of the board and recommend to the board those candidates who meet the requirements to be elected at the next Shareholders' General Meeting.

Equal attention is given by the interviewees to the characteristics needed to be an independent board member; in Colombia these characteristics are stated by law. As Interviewee A10 (regulator) explained:

> "The parameters in the Law 964 are very strict, to get an independent person, the level of independence required by the rule, it is sometimes difficult to get the appointment of the right person. To the supervisors, this rule has been beneficial, having these independent members on the boards increases the flexibility in the management and control of the organisations; some family businesses include an independent member on their board, independent members raise the management of organisations to a new level, and set the entity to work differently. However, a few organisations are uncomfortable with this; some of them have commented on their concerns to the supervisor in terms such as: including an individual who is independent requires a lot, and makes us more effective, meet our goals and greater achievements. The

[36] Law 964, 2005, Chapter 2, Article 44 stated that the board of directors of a listed company at least 25% of its members should be independent non-executive directors.

> difficulty lies in finding someone who knows the subject and it is truly independent".

The emphasis on independent directors arises from the idea that such directors will keep company management focused on the interests of stakeholders. A board that includes members who are truly independent of mind is more likely to be vigilant about the reliability of information provided to financial markets and to interested stakeholders in general. It is also believed that only legitimate boards may assert their authority over the management of an organisation. Having independent members on the board of directors may be taken as evidence that organisations implement corporate governance principles because they want legitimate their activities. In the case of Colombian listed companies, they should comply with established rules that mandate the inclusion of a determined number of independent directors on their boards; in this way conforming to the countries legislative framework, companies gain legitimacy. There are also companies which include independent directors on their boards voluntarily; this may be seen as something which is appropriate and right to do. Adhering voluntarily to regulations organisations may effectively secure the possibility to be seen as legitimate businesses which are consistent with suggested rules. In Colombia, SOEs especially, tend to provide a fuller picture of performance rather than just a financial one. This may be because their performance is poor or because they wish to divert attention away from other financial issues such as mismanagement, undue use of funds or concerns such as improper hiring of employees, prohibited involvement in politics and misuse of corporate assets among others, all which raise questions about legitimacy. Lindblom (1994) asserts that legitimacy concerns provide a motivation for increased social disclosure by organisations that are potentially affected by these concerns. Additionally, organisations are interested in creating, and maintaining a good image, which may be beneficial in furthering manager's and politicians' personal interests.

6.8.3 Board Committees

According to Interviewees A9 and A10 (regulators) the proper performance of the board requires the establishment of specialised committees integrated by some of its members to facilitate detailed analysis of certain issues that, due to their nature, are of great importance for the company. These committees act as a filter and reinforce the objective analysis of the decisions that correspond to the board. Interviewee E10 (Independent Director) mentioned that it is considered good corporate governance practice to have the existence of at least one audit committee comprised of independent board members and a nominating and compensation committee.

Interviewees A1, A8, A11 and A12 agreed that the primary function of the audit committee is to assist the board of directors in fulfilling its responsibilities with respect to financial reports and other financial information provided by the company to its stakeholders. Further, the audit committee should be responsible for ensuring that the company's financial statements are accurate use fair and reasonable estimates. Normally, the board members select, hire, and work with an outside auditing firm. The firm nominates a *Revisor fiscal*, who is the individual who actually performs the audit work. One of the advantages of having an audit committee is cited by Interviewee A11 (regulator) when he said:

> "Audit committees are much more important in our particular economy; they may answer all internal control issues against risks related to money laundering. Audit committees may help to strengthen the company's internal control measures aimed at the organisation's customers, suppliers, and to all whom the company is representing; all of this is to prevent getting involved in dealing with illegal money".

The existence of an independent audit committee is recognised internationally as an important feature of corporate governance. According to some interviewees, most companies with an audit committee have decided that this committee needs to have at least three members and that all the members of the committee should have a working familiarity with finance and accounting practices. Also audit committee members should meet any independence requirement under corporate governance rules.

Interviewee A8 (regulator) mentioned some of the results of a 2008 survey carried out in the country by the Superintendence of Companies whereby 15.8% of companies had an audit committee, 9.7% had a nomination and remuneration committee, 5.9% had a corporate governance committee, and 11.4% had other committees.

6.8.4 Remuneration policies

A number of the interviewees mentioned that normally a compensation and remuneration committee sets the base compensation, stock options awards and incentive bonuses for company's executives, including the CEO. Interviewee A11 (regulator) argued that executive compensation schemes may not play the same role in decision-making as it does in firms with a more disperse ownership structure given that the controlling owners can hire and fire managers at their own discretion. Furthermore, Interviewee A14 (company director) mentioned that controlling shareholders may typically have many other means to reward themselves. According to some interviewees disclosure of executive schemes is nevertheless a good thing, even when they are not the key motivating force in managerial decision-making. Compensation committees, in their capacity as committees of the board, have overall responsibility for evaluating officers and directors' compensation plans, and for overseeing company disclosures relating to such compensation plans, policies and programs. In relation to the issue of compensation for key company personnel Interviewee A11 (regulator) cited:

> "Regarding the remuneration policy for key executives, an issue in closed companies where a high concentration of capital held by the majority shareholder and minority shareholders are kept out of the management of the business; frequently these minority shareholders are at a disadvantage on everything related to remuneration, fees, salaries, and so on. In a Superintendence of Companies survey only 47.2% companies answered that they had a compensation policy for the CEO and key executives".

Interviewee A8 (regulator) also talked about the results of the same 2008, Superintendence of Companies survey and cited that 49.5% of the companies that answered the questionnaire said they provided information about the remuneration of key personnel in their annual report.

Remuneration issues are related to those of disclosure, which is covered next. The idea is that organisations have a nomination and remuneration committee in charge to deal with these issues in a transparent manner. Having coherent, fear and transparent remuneration policies may help to maintain the legitimacy of company activities. Discussing the reasons why organisations want to disclose information helps to understand the reasons why companies want to implement corporate governance. For this particular study it is important to find out: whether it is because they want to be accountable to all their stakeholders or because they want to legitimate their activities.

6.8.5 Disclosure of information

According to the expressed by the interviewees, organisations' disclosure policy is a way to engage with their stakeholders, discharge their accountability and also to show the legitimacy of their activities. The majority of the interviewees believed that companies disclosed information in accordance with the legislation and market regulation and also to comply with accounting norms. Similarly, the disclosure approach taken by organisations may be affected by informal rules which often are a result of cultural norms. A number of interviewees believed that disclosure plays an important role in corporate governance. However, according to Interviewee A2 (company director), the way information is communicated surrounding a company's corporate governance is even more important. She stated that companies need to make information readily accessible and focus their efforts on providing clear, concise messages in a transparent manner.

Another issue mentioned by the interviewees is that companies of different sizes and capital structures faced different demands by stakeholders seeking greater disclosure and more transparent explanations for major decisions. Organisations need to maintain their stakeholders trust. Many interviewees believe that developing an information disclosure policy is an important step taken for companies that want to engage with their stakeholders. Effective maintenance of, and appropriate access to, accurate and complete information and records enables those with the right to know to see what has been done, how and by whom. This enables them to hold accountable those charged with the management of the organisation, the conduct of processes and the delivery of outcomes. For example Interviewee A10 (regulator) explained this process as follows:

> "Disclose relevant information is a way to legitimate organisation activities, as accurate information, enhance stakeholders understanding of the organisation itself".

According to some interviewees companies can symbolically manage legitimacy through voluntary disclosure of relevant information. Through corporate disclosure, organisations communicate to all their stakeholders that they are abiding to the terms of established rules and thus achieving the legitimacy necessary for their continual survival. In relation to this, Interviewee A2 (company director) pointed out: "The foundation of the structure of corporate governance is disclosure". Interviewee A3 (company director) extended this further to say:

> "Good governance can be regarded as a collection of practices that an enterprise should have. Good governance goes along with social responsibility but above all with companies' sustainability, and sustainability is the direct access to well informed consumers, not having good practice might force an organisation to disappear".

In addition, Interviewee A19 (senior lecturer) mentioned that corporate governance is the mechanism established by a company to be much more transparent to all its stakeholders. Further, Interviewee A17 (senior lecturer) argued that "Good corporate governance is a guarantee of seriousness and respect". He also mentioned that:

> "Some companies implement corporate governance practices to manage their relationship with their stakeholders, this policy is aimed to creating a transparent business and to show a good attitude at regulatory and control authorities, within the parameters set by the government".

Organisations employ a variety of communication mechanisms in their attempts to reach and engage with a wide range and large number the stakeholders. The internet is one of such mechanisms which have been seen as useful because of the large number of stakeholders who can potentially be reached and because of the interactive communication facilities embodied within it. In the case of stakeholder engagement it is also believed that through the internet stakeholders' dialogue may contribute to company's ethical, social and economic responsibilities. A clear obstacle to such activities, more than the number of companies that use the internet to disclose company information, is the sort of information that companies make available. To address this CAF has recommended companies in the Andean region to use their Web page as an essential disclosure tool. Interviewee E8 (regulator) cited again the results of the Superintendence of Companies' survey that companies grade the importance of having a website as: 56.2% for large companies, 42.7% for medium-sized companies, 28.3% for small companies, while only 15,5% of micro-companies see it as important to have a Web page. According to Interviewee E8 as companies grow they start to use such tools. However, the website content, and specifically whether the company's Web page includes aspects of interest to corporate governance, the survey results shows that most of these pages have things like the mission and vision of the company, 6.7% of them have the statutes, 5.2% of the companies have their corporate governance code, 3.3% have an annual corporate governance report, and 5.7% have basic financial information and management reports. For Interviewee A11, a surprising finding was that only 6.1% of companies use their Web page to call for the General Assembly of shareholders.

Interviewee A11 mentioned that while some companies, particularly the larger ones use web pages, the content within these pages must be improved, and should be considered at the country level and for all kinds of organisations as web pages are useful tools for any organisation. Interviewee A21 argued that companies are able to use, to manage or manipulate some stakeholders in order to gain or maintain support which is required for its survival. This may be taken as the importance given by organisations to the disclosure of information in the process of legitimising company activities.

6.8.6 Internal controls and risk management

All the interviewees shared the view that board of directors have overall responsibility for the organisation's system of internal control and risk management and for reviewing their effectiveness. Also a number of interviewees believed transparency and accountability are key requirements to corporate governance; companies must attempt to strengthen management oversight and supervision taking into account the perspectives of non-executive directors and external auditors. At the same time companies must develop their internal control framework with respect to information disclosure for executives and employees to ensure accountability. Interviewee E9 (auditor) went on to say that internal control procedures are policies implemented by the board of directors, audit committees, management, and other personnel to provide reasonable assurance of an organisation's achievement of its objectives related to reliable financial reporting, operational efficiency, and compliance with laws and regulations. Internal auditors are personnel within an organisation's who test the design and implementation of an entity's internal control systems and the reliability of its financial reporting. In this respect internal control and risk management systems include processes where different company bodies interact. Interviewee E7 (regulator) explained it as follows:

> "Management control is an important point within the corporate governance to the Superintendence [of Finance]; as it is the organisation of the interrelationship between governing bodies. For example, the CEO is reporting to the board, this board at the time reports to the General Assembly, there are also acting various committees. This means that different bodies are

> passing information to each other, management bodies to control bodies. We as the supervisory body look at the management control from the point of view as it were an internal audit report".

The regulators cited the system of internal control, which was defined as a process, performed by a company in order to provide reasonable security for the fulfilment of the organisation objectives. Company management have responsibilities including the duty to manage the company efficiently and economically and to establish and maintain appropriate systems of internal controls and risk management.

According to most of the interviewees many companies now included in their annual report information on risk management and material risk factors, such as its certification on internal control for the *Revisor fiscal* (information about the *Revisor fiscal* is given in the next section). Interviewee A10 (regulator) described corporate governance risk as:

> "A cross-risk that is touching all other risks an entity faces. An independent risk with endless components; this means that when assessing corporate governance we can also see how the entity is dealing with the credit risk. Not looking at figures but it is analysed as the organisations' operational risk management. The supervisor looks at the decisions taken by the board when solving problems, such as the flaws brought up by the internal auditor; what corrective measures were taken by the board to solve that problem; what did management; what did the company's control organs, what decisions were taken by the General Assembly of Shareholders. On this way is how we conceptualise corporate governance".

Risk management is very important within the concept of corporate governance. According to some interviewees companies normally deal with their risk within a framework that includes accountability, internal control and auditing. Interviewees A12 (auditor) and Interviewee A20 (senior lecturer) also explained the importance of evaluating a company through a corporate governance risk. Interviewee E9 pointed out that:

> "There is a simple conclusion, when an entity has weak corporate governance, this entity may be more exposed to other risks, such as market risk, and its financial risk might grow seriously. Because when no corporate governance rules are applied properly, other risks are also being neglected".

As having an external assessment is a voluntary practice some companies have decided to have additional evaluation by external independent bodies or individuals as it was mentioned by Interviewee A4 (company director):

> "The company now is assessed by an external organisation, this allow us to show to our stakeholders how we are applying corporate governance standards and more important that the assessment is done by an independent evaluator".

However, some interviewees argued that the use of internal control systems and risk management is not a common practice among all companies. They mentioned that companies, for reasons such as size or capital structure, are not prepared to expend time and financial resources on these issues. According to some interviewees some companies simply do not control their company's risk because they are not aware of the benefits these practices may represent to their organisations. In relation to this Interviewee A15 (Independent director) pointed out:

> "Regarding the internal control and risk management, some companies the only they have are some risk certifications issued by financial entities, for example, as these certifications are required by law. The risk in credit or financial risk is measure by banks or credit providers. But companies do not have an internal risk manager. – 'Medium and large companies are the only ones that can enjoy this luxury, in the country our entrepreneurs still very primitive' -. All this is due to the culture of evading responsibilities, many do not pay taxes, do not met the obligations to their workers, conceal assets, have double accounting records; therefore, they do not see the need to develop an internal control system or manage company risks".

An additional view to the internal control and risk management is that they show their stakeholders that they are accountable and transparent. For example Interviewees A21 (postgraduate student) cited:

> "Transparency in the operations of a company is related to a behaviour that can cope with public scrutiny, with more responsibility, values and ethics. Risk management decreases risk, it may create more value for customers, suppliers, employees and other stakeholders. Similarly, selection of talented employees according to the needs of the company; external economic assessment [legitimacy] from institutional investors, as well as more formal forms of professional control; it may result in more chances of success; although this has not been proved".

From the above statements, it can be inferred that individuals are aware that the board has overall responsibility for the organisations' risk management and system of internal control and for reviewing its effectiveness and that this review should be done through the audit committee. However, mostly due to the size of the companies and also to ownership concentration, not many companies have developed a system of internal controls and risk management within their organisations; thus it may be fact difficult to hold management or company directors accountable. Nevertheless, those companies using an external risk assessment may use them as a way of legitimating their activities. The above evidence helps to understand the weaknesses and difficulties faced by some organisations implementing mechanisms to be accountable to their stakeholders.

6.8.7 Auditors appointment

The function of auditors is to obtain and evaluate evidence regarding statements about economic actions and events to ascertain the extent to which they correspond with established criteria, and to communicate with interested users. It is expected that auditors in the fulfilment of their functions should play a significant role in establishing good governance. This is important because of the increased reliance by stakeholders in auditors. In Colombia audit work is performed by the *Revisor fiscal*. Interviewee A20 (senior lecturer) provided an explanation about the *Revisor fiscal* a figure created by the Colombian Commercial Code, combining the functions of an external auditor with those of what is known in Mexico as a *comisario* and in Brazil as the *conselho fiscal*. The Assembly General Meeting nominates the *Revisor fiscal*, whose duties include among others the certification of the quality of internal controls defined broadly, including processes and operations. There is an inherent conflict of interest in that the *Revisor fiscal* gives the company instructions and then audits their execution. Interviewee A10 (regulator) pointed out the significance of the figure of a *Revisor fiscal* for Colombian companies as he quoted:

> "The *Revisor fiscal* is an essential part of corporate governance structure, as they are part of the business mechanisms for internal control, management and accountability and report through the income statements, etc. at the end of each financial year".

All the interviewees also mentioned that companies can rely on external auditors to assess the quality and effectiveness of its internal control system, including compliance with accounting standards. The presence of an external auditor is seen as a good corporate governance practice that reinforces the external controls of the entity. In relation to this Interviewee A1 (company director) pointed out:

> "A very important issue is the control through the external auditor. It is a good monitoring exercise on the activities of the company; this is a good filter that ensures compliance and good relations between the company and its stakeholders".

Another issue considered important in relation to the role of external third parties involvement in companies control systems, was mentioned by Interviewee A10 (regulator). Some Colombian companies are under the obligation to appoint a Policy Controller; the main function of a Policy controller is to establish procedures to ensure compliance with laws, regulations, statutes, and in general all the regulations and internal measures of good corporate governance, codes of ethics, good conduct and business transparency which are related to the activities of the organisation. Equally, the comptroller must report and document policy to the board the irregularities that may affect the healthy development of the company. This figure is compulsory for stockbrokers, but its use in other financial institutions is seen as a good practice.

Recently, auditors have been trying to introduce an initiative to improve decision-making processes and especially activities relating to the resolution of conflicts and related party transactions. Interviewee A12 (auditor) explained such activity as follows:

> "Auditors are trying to introduce in the companies they audit manuals of conduct and ethics for dealing with third party interests, this to make sure decisions are not taken lightly, and also as a way of ensuring independence of committees when making decisions, especially those related to transactions which may present a conflict of interest. However, it can be said that developments in that area still very incipient".

Much emphasis is placed on auditors in the context of corporate governance because in most cases, auditors will be the first person to spot corporate wrongdoing. This is due to the nature of the auditing function and the purpose of auditing company accounts. It can also be a case of only being one person who is aware of the exploitation besides the wrongdoers. Thus in many cases the auditors may choose not to detect the wrongdoing at the expense of their duties and obligations. It is expected that an audit would provide a high level of assurance about the accountability of the management and directors of company. Therefore, the role of auditors is very important in protecting the rights and interests of stakeholders.

6.9 Summary

This chapter reports the research findings from the semi-structured interviews conducted with key Colombian individuals. An important finding from the interviewees indicates that there have been a good number of activities promoting and supporting the implementation of corporate governance principles in Colombia during the last decade. The findings show that the private sector, international organisations such as CAF, CIPE, IFC and IADB, and some Colombian associations such Confecámaras have been very influential in the development of corporate governance in the country.

Evidence gathered through the interviews agrees with the available literature in that there is no precise definition for corporate governance. A narrow view sees governance as a term describing the way managers handle their responsibilities to owners or shareholders, whilst the wider view sees corporate governance as an organisation's relationship to society, often confusing corporate governance with corporate social responsibility.

Most of the corporate directors interviewed seem to be sympathetic with the broader role for stakeholders. This is peculiar, considering the high proportion of SMEs, the number of family-owned business and the level of ownership concentration in the country. There are also those who have a narrow view and, who also agree that company managers should render their accountability to shareholders. There are also others with a CSR focus; these normally see a close association between corporate governance and corporate social responsibility, and believe that companies are accountable to all their stakeholders; additionally, they think that organisations implement corporate governance principles to legitimate their actions.

In particular, those performing the regulator roles are the ones who normally have a narrow corporate governance view, probably because their obligations are the regulation and overseeing of the economic activities of listed companies and all financial organisations listed or non-listed in the country. Regulators usually have a corporate governance definition based on the relationship between managers and shareholders or company owners and therefore deem companies accountable primarily to their owners. Independent directors and most of the company directors tend to have a wider view about corporate governance; they believe good practices should be applied to an organisation's relationship with all its stakeholders, rather than just its owners. Equally, for this group of people companies are accountable to all stakeholders affected by, and who are able to affect, company activities. They also advocate campaigns aimed at having stakeholders able to claim their lawful rights and to hold organisations accountable. This implies the active involvement of internal and external stakeholders in organisational decision-making. Participation mechanisms include regular consultation with stakeholders or including stakeholders' representatives on boards of directors. Participation must allow for change; it has to be more than acquiring approval for, or acceptance of, a decision or activity. Underpinning this is the principle that stakeholders have the right to contribute to decisions that affect them. Organisations wanting to engage with their stakeholders must be prepared to share information, listen to and learn from stakeholders with the goal of building understanding and trust on issues of mutual interest.

Additionally, there has been a rise in the country for issues related to social responsibility and some of the supporters of corporate governance are also promoting the idea of having social responsible companies, and tend to take a CSR approach to corporate governance. Those taking this approach believe companies are accountable to all stakeholders. The also find that governance mechanisms such as having independent board members, disclosure of relevant information, being transparent and ethical may be sufficient to show an organisation's legitimacy. The legitimacy of an organisation is an issue when the stakeholders have the ability to influence the success or failure of that organisation at various levels. For example, stakeholders are able to affect the organisation's license to operate, eroding levels of trust of that organisation. One of the objectives engaging stakeholders in the organisation's governance is to generate a better understanding of stakeholders' perspectives on key issues and, consequently, build relationships with key individuals. It is also suggested a better relationship with stakeholders may provide a more stable environment for society and business. In addition it is believed that stakeholder engagement can build trust in the organisation, and enhance the social licence to operate, which at the same times a key issue in organisation legitimacy.

Some interviewees view corporate governance as dealing with mechanisms by which stakeholders of an organisation exercise control over corporate insiders and management such that their interest is protected. Indeed, most company directors believe that stakeholders' relationship is an important element of an organisations' success. Stakeholders primarily include investors, managers and employees, customers, suppliers and business partners, and local communities. Regulatory and supervisory bodies, civil activists, and fair trade commissions are also involved in setting and enforcing rules on corporate conduct for the protection of investors. Media attention might also influence politicians, controlling families and management, who are concerned about their reputations, to implement corporate governance practices, laws and policies.

For the majority of the interviewees the central focus of corporate governance is the structure of the board of directors. In general, companies are moving to structure their boards with more independent directors, and organise them around committees overseeing management, remuneration and auditing. These factors are indicators of good corporate governance and thus make organisations more attractive to investors and legitimate in the eyes of customers and suppliers.

It has also been stressed by some interviewees that countries and companies may continue to exhibit local characteristics because different countries have followed varying patterns of economic development; a complex mix of historic, legal, political and economic factors shapes each country's corporate landscape.

An issue that needs to be highlighted is that corporate governance in Colombia relies a great deal on the country's legal framework as many of the corporate governance standards are derived from laws, decrees, and other rules issued by the government. For example, Colombian law sets out how board members are nominated, who may be an independent external director, and the appointment of the *Revisor fiscal*.

The interviewees also mentioned other important issues that need to be considered as a central part of corporate governance such as the need for managers or owners to give reasons for their conduct, responsibilities and authorities granted, in other words to be accountable for actions and decisions taken. In addition, matters such as the importance of being transparent, morally responsible, and voluntary disclose information, are also highlighted by the interviewees, and supports the view that companies are interested in showing that their activities are desirable, proper or appropriate within the norms dictated by regulators or constructed by society. To some extent, there is agreement that companies implement corporate governance principles to show their legitimacy.

Additionally, the majority of the interviewees agree in the need for a well structured board of directors, with the necessary number of independent directors and conforming to at least the three basic board committees: the audit; nomination and remuneration; and corporate governance committee.

Overall, it has been argued that corporate governance should provide a framework of adequate protection to the interests of stakeholders and reinforce fiduciary responsibilities of those vested with the authority to act on behalf of the stakeholders. The governance framework is there to encourage the efficient use of resources and equally to require accountability for the management of those resources. At the same time with the growing interest in corporate social responsibility issues, regulators and promoters have been supporting the adoptions of additional standards; meaning that corporate executives have had to wrestle with how they balance their commitments to the organisation's owners with their obligations to an ever-broadening group of stakeholders who claim both legal and ethical rights. The aim applying the new standards is to align as nearly possible the interest of individuals, organisations and society. Corporate governance encourages companies and those who own and manage them to achieve their corporate objectives through a more efficient use of resources. Moreover, the corporate governance framework should recognise the rights of stakeholders as established by law. Evidence collected through the interviews also suggested that managers recognise that to be effective in establishing and maintaining mutually beneficial relationships with stakeholders, they must understand and negotiate the many environmental influences on the organisation that impacts its survival. It is also know that organisational survival depend not just on material resources and technical information, but also in the organisation perceived legitimacy.

Table 6.3 presents a summary of the findings from the interviews and that can be used to answer the three research questions. In general the interview findings suggest that there is not a broad stakeholder perspective; the interviewees also acknowledge the weaknesses and difficulties faced by Colombian organisations validating their accountability mechanisms. Equally, the evidence gathered shows the importance which is given to the adoption of corporate governance standards by organisations in the country as a way for indicating the legitimacy of company activities.

Table 6.3 Summary of the Interview Findings

Interviewees Groups	RQ 1	RQ 2	RQ 3
G1: Managers and CEO's	There is the desire to engage with all the stakeholders of an organisation, but it is not easy	Accountability according to the law is primarily toward shareholders	The voluntary adoption of corporate governance standards enhances company legitimacy
G2: Regulators	Promoting standards according to the law and this relates only to shareholders	Accountability is primarily due to the organisation shareholders	Conforming to the country's legislative framework companies gain legitimacy
G3:Independent Board of Directors and Auditors	Wider stakeholder perspective, however acknowledge that is difficult to engage with all the stakeholders of an organisation	Concede that accountability should be to all company stakeholders, but the reality is different	Organisations gain legitimacy having independent director in their boards
G4: Outsiders – Academics, Investors and other users of company's information	What it is needed is to change the individualistic culture	In order to extend accountability beyond the shareholders other stakeholders need to know their rights	Acknowledge of the importance of having a good image (legitimacy) for an organisation

This table summarises the evidence gathered from the interviews with Colombia stakeholders and which helps to answer the three research questions:

- *Research Question 1 (RQ1) – Is corporate governance viewed from a broad stakeholder perspective?*
- *Research Question 2 (RQ2) – Is corporate governance implemented to enhance accountability to stakeholders?*
- *Research Question 3 (RQ3) – to what extent corporate governance is adopted to legitimate company activities?*

CHAPTER SEVEN

Case Study Results

CHAPTER SEVEN

Case Study Results

Introduction

This chapter discusses the findings of a case study of CAF and documents the developments in the implementation of corporate governance principles by organisations in the five countries of the Andean Region. In particular this chapter analyses the ways that companies of all sizes, public or private, in Bolivia, Colombia, Ecuador, Peru and Venezuela are implementing the Guidelines for the Andean Corporate Governance Code (Lineamientos para un Codigó Andino de Gobierno Corporativo - LCAGC) developed by the Andean Development Corporation (Corporación Andina de Fomento - CAF). This chapter also aims to answer the three research questions: whether (i) corporate governance is viewed from a broad stakeholder perspective; (ii) companies in the region decide to implement corporate governance principles because they want to be accountable to their stakeholders; and (iii) they want to legitimate their activities.

The chapter starts with a description of the information sources used in the case study. First, data was gathered through interviews with three groups of people (see Table 7.1): (i) CAF employees; (ii) officials of organisations in the region known as CAF counterparts, who have supported the implementation of corporate governance principles in each country of the region; and (iii) directors of companies that took part in a CAF pilot study. A second source of data was interviewees realised by PROCAPITALES, one of CAF's counterparts in Peru. Third, information was also gathered from annual reports from companies that took part in a CAF pilot study. Fourth, a mini survey was distributed among the participants at a conference attended by the researcher. Fifth, information also can from speeches on related issues given key speakers at events attended by the researcher. Additionally, data was obtained from corporate governance literature received from those interviewed or published from regulator and others promoting the implementation of good practices in the Andean region.

This descriptive section starts with details of the interviewees and their organisations. The results are then presented by starting with the views concerning CAF's activities aimed at developing and improving corporate governance in the region together with an introduction of other issues affecting the implementation of the principles in the Andean countries. This is followed by a discussion of definitions of corporate governance that exist and the interest that corporate governance has generated in individual countries or at a regional level. The views of the interviewees regarding whether corporate governance should be voluntary or if there is a need for more regulation are then noted. In addition, views about the adoption of corporate governance standards by SMEs, family-owned business and SOEs. Additionally issues related to the overlap of CSR and corporate governance is also discussed.

The next section examines the results on particular issues related to corporate governance such as views on the board, how board of directors members are elected, who must or may be a member of a board, the need for independent directors, the board's structure and functions, rules by which it should be governed, how board meetings should be held, and views on board committees. It also includes opinions of the systems needed to manage internal control and risk management and auditors appointment. The analysis focuses on understanding stakeholders' roles in shaping the implementation of the principles of corporate governance, to whom and how companies or management are accountable and the desire by companies to legitimate their operations as a factor in their implementation of corporate governance principles.

7.1 Information sources

As mentioned above, the data for the case study was collected using a number of different methods; it was expected that using more than one method would provide sufficient and relevant information to allow a comprehensive analysis of the developments in the implementation of corporate governance practices in the Andean Region. The research focuses on the activities undertaken by CAF to promote the implementation of good practices in the region. It is noteworthy that a large majority of the sources of information for this study were in Spanish. For example, all the interviews, including those taken from PROCAPITALES were carried out in Spanish, equally much of the collected documents including financial statements are in Spanish; only a small number of companies' annual reports are in English. At the events attended only a few speakers presented their talks in a language other than Spanish. All necessary translations were made by the researcher. Next are introduced details of the sources of information used in this case study.

7.1.1 The Case Study interviews

Case study interviews were conducted with 11 individuals related to the Andean Development Corporation (Corporación Andina de Fomento – CAF), see Table 7.1. Four of the respondents are CAF employees (B1 – B4); these executives perform their tasks in either the main office of the Corporation which is located in Caracas (Venezuela) or regional offices based in the capital cities of each of the shareholder members of CAF.

Table 7.1 Interviewees for Case Study

Interviewee	Function	Country	Organisation	Gender	Group
Panel A: CAF Employees					
B1	Manager	Colombia	CAF	M	G5
B2	Manager	Colombia	CAF	M	G5
B3	Manager	Venezuela	CAF	M	G5
B4	Manager	Venezuela	CAF	M	G5
Panel B: CAF Counterparts (1)					
C1	CG Project Director	Colombia	Medium-Sized	M	G6
C2	CG Project Director	Colombia	Large Company	F	G6
C3	CG Project Assistant	Ecuador	Large Company	F	G6
C4	CEO	Venezuela	Medium-Sized	F	G6
Panel C: CAF Pilot Companies (2)					
D1	CFO	Colombia	Large	F	G7
D2	CEO	Ecuador	Large	M	G7
D3	CFO	Ecuador	Large	M	G7

Note: This table shows some of the characteristics about the interviewees. Function relates to their job title, the country where there are based, the size of the organisation they work for, and gender distinguishes male (M) from female (F) interviewees.
G5 CAF's Staff, G6 CAF's Counterparts and G7 Individuals from organisations that took part in CAF's Pilot Study; (G1, G2, G3, and G4 are used to group interviewees in Chapter six)
(1) The two medium-sized companies are private associations which are run with some degree of state support but at the same time are independent of government intervention.
(2) Interviewees D1 and D2's companies are manufacturing organisations
Interviewee D3'sCompany belongs to the fishing sector

The information obtained from the interviewees is particularly important as one of them was a CAF employee when CAF first recognised the importance of implementing corporate governance principles in companies of the region; the remaining CAF staff members are responsible for key areas in the corporate governance project not only at an individual countries level but also regionally. Another four interviewees are employees of entities that act as CAF’s counterparts in the region (C1 – C4), who are responsible for promoting corporate governance at their country level; most of these activities are supported financially and technically by CAF. The remaining three interviewees are directors of companies that participated in CAF’s pilot study (D1 – D3); the three companies are large family-owned businesses two in Ecuador and one in Colombia.

From this group of people it was possible to obtain important information on corporate governance, due to the respondents’ familiarity with the process of the development of corporate governance, its implementation and the evaluation of practices to date.

7.1.2 PROCAPITALES Interviews

The above interviews exclude Peru because an exclusive survey had already been carried out in that country by PROCAPITALES. Under its initiative to promote the implementation of corporate governance practices CAF chose PROCAPITALES as its counterpart in Peru for a project with the objective of implementing best practices throughout the Andean region. This project includes the preparation of an action plan for disseminating corporate governance concepts and principles in the Andean region, the preparation of the Andean Code of Corporate Governance, and the implementation of the pilot program on corporate governance practices within five Peruvian companies.

In 2006 PROCAPITALES and the postgraduate school of Universidad Peruana de Ciencias Aplicadas (UPC – Peruvian University of Applied Sciences) set up a competition which rewards Peruvian companies that are committed to change and to meet the principles of corporate governance.

The program began with a breakfast meeting where issues related to good corporate governance practices were presented to the management of those companies interested in participating in the competition. All the competition’s activities have been supported by CAF (Andean Development Corporation), CIPE (Centre for International Private Enterprise), the Peruvian Association of Pension Funds, and El Diario el Comercio (a Peruvian Newspaper). The competition assessed companies that demonstrated a commitment to good corporate governance based on transparency and business ethics as factors of value creation. As a general reference the “Principles of Good Governance for

Peruvian Corporations”[37] were used. However, the evaluation included additional aspects to those reported in that document. Ernst and Young worked as technical advisor to develop the technical elements of the measurement of best corporate governance practices in use locally and globally. The competition awards prizes to those the companies which demonstrate outstanding performance in categories such as:

(a) Better treatment of shareholders: Good corporate governance should protect shareholder rights and ensure fair treatment for all. In this regard, it measured equitable treatment of the company to its shareholders and its dividend distribution policies.

(b) Better Board of Directors policies: The Board should play a significant role in the development and review of the company’s strategy and overseeing business operations. Therefore, the policy evaluated election of directors, the existence of special committees within the Board and the policies of management control and empowerment to the management. It also evaluated the definition of stakeholder roles and the board of directors and managers.

(c) Information transparency: The quality of information and communication affects the ability of company management, shareholders and stakeholders for making appropriate decisions. This was assessed on whether the information regarding all material issues of the company were presented in a precise, accurate and regular way. It was also awarded on the creative and proactive dissemination and presentation of the legal, financial and operational matters of the companies.

(d) Managerial structure and risk management: Management must have a defined structure and processes to identify and analyse the relevant risks, both internal and external, to achieve the objectives of an organisation.

(e) Behaviour with the internal and external environment: The contest also considered an evaluation of the integration and active engagement with employees, suppliers, customers and the community.

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[37] Document prepared by the Association of Banks (ASBANC), the Lima Stock Exchange (BVL), the National Supervisory Commission for Companies and Securities (CONASEV), National Confederation of Private Business Institutions (CONFIEP), Centre for Capital Markets and Financial (MC&F), Ministry of Economy and Finance (MEF), the Association of Capital Market Developers (PROCAPITALES) and the Superintendence of Banking and Insurance (SBS)

Prizes were also given to companies with the best: annual report; website as a communication tool to the market and to stakeholders; creation of shareholder value; corporate governance in state-owned enterprises; corporate governance in companies that do not have a public offering of securities; corporate governance in financial and micro enterprises; and better corporate governance in family businesses. Table 7.2 presents a description of the 24 Peruvian company directors from the organisations that took part in the first corporate governance contest organised by PROCAPITALES.

Table 7.2 Peruvian Directors interviewed by PROCAPITALES

	FUNCTION	SECTOR	TYPE
E1	CEO	Manufacturing	Medium - Family controlled
E2	Chairman	Insurance-Pension	Large - Listed
E3	CEO	Agro-Industry	Medium - Close controlled
E4	CEO	Manufacturing	Large - Listed
E5	CEO	Financing	Medium - Listed
E6	CFO	Financing/Banking	Large - Listed
E7	CFO	Financing/Banking	Large - Listed
E8	CEO	Manufacturing	Large - Close controlled
E9	CFO	Mining	Large - Listed
E10	Chairman	Fishing	Medium - Family controlled
E11	Chairman	Manufacturing	Large - Listed *(1)*
E12	CEO	Utilities Supplier	Large - Close controlled
E13	CEO	Electricity Generator	Large - Listed
E14	CEO	Wholesale	Large - Listed
E15	CEO	Financing	Large - Listed
E16	CEO	Construction	Large - Family controlled
E17	CEO	Financing/Banking	Large - Listed
E18	CEO	Wholesale	Medium - Close controlled
E19	CEO	Healthcare	Large - Listed *(2)*
E20	CEO	Pensions & welfare funds	Large - Listed
E21	CEO	Utilities Supplier	Large - Listed
E22	CEO	Services	Large - State controlled
E23	CFO *(3)*	Mining	Large - Listed
E24	Marketing Director	Services	Large - Listed

Source: PROCAPITALES video, Corporate Governance Competition, 2006
Note: This table shows some important characteristics about the individuals interviewed by PROCAPITALES, function relates to their job title, sector the organisation economic activity, and type to the size and capital structure. All the interviewees are males.
(1) One of the seven companies that integrated CERVESUR Corporation; (2) American based subsidiary company; (3) CFO and Relationship with shareholders Director

The contest's organisers are convinced that the commitment to good corporate governance based on transparency and corporate ethics leads to success for all the organisations whose governing bodies make a real commitment to change to guide companies to comply with these principles. In interviews conducted by PROCAPITALES the directors expressed their views on good practice and what they expected to gain from their participation in the competition. The answers of the interviewees are part of the information analysed in this case study.

7.1.3 Corporate governance in Bolivia: Information sources

Gathering data about the corporate governance developments in Bolivia was particularly difficult due, in particular, to the political and economic struggle presently undergoing in the country. This issue was also raised by CAF staff at the interviews. However, enough information to provide an insight about the implementation of corporate governance in Bolivia was obtained from sources such as the publications by the Bolivian Stock Exchange (Bolsa Boliviana de Valores – BBV), which is CAF's counterpart in Bolivia. Also reports from CAF's programs in Bolivia such as "the training and diffusion of corporate governance in Bolivia", project undertake with the cooperation of BBV, the Chambers of Industry and Commerce of Santa Cruz (Bolivia) and some Bolivian Universities. Information was also taken from "the implementation of a corporate governance code for the insurance industry in Bolivia" project run by the Bolivian Association on Insurers (Asociación Boliviana de Aseguradores – ABA). In addition there was information available from a newspaper interviewee to Alejandro MacLean, ABA's Chairman (El Diario 22/09/2008); recordings from a speech and articles written by Miguel A. Nabil, Bolivian's Superintendent of Finance; in addition web publications by the Bolivian's Superintendence of Companies; and Annual Reports from Bancosol, a Bolivian company which took part in CAF's pilot study.

7.1.4 Documents – Annual Reports, from CAF's Pilot Study Companies

Part of CAF's action plan focuses on the dissemination of corporate governance principles in the corporate sector of the five Andean countries Guidelines were first formulated for an Andean Code on Corporate Governance (LCAGC, based on its name in Spanish). Then it created a network of local partners that includes the Bolsa Boliviana de Valores (Bolivian Stock Exchange), Confecámaras (The Colombian Confederation of Chambers of Commerce), Bolsa de Valores de Quito (Quito Stock Exchange – Ecuador), PROCAPITALES (Peru) and the Venezuelan Association of Executives (AVE). Next, CAF's corporate governance standards were implemented as part of a Pilot Study in fifteen companies located in the five Andean countries, as shown in Table 7.3.

Table 7.3 Companies in CAF's Pilot Study

No	Country	Company	Industry	Type
1	Bolivia	Bancosol	Banking	Large - Listed
2	Bolivia	Tahuamanu SA*	Food and Beverages	Medium - Listed
3	Colombia	Seguros Bolivar	Insurance	Large - Listed
4	Colombia	Mac SA	Manufacturing	Large - Family Controlled
5	Colombia	Coéxito SA	Wholesaler	Medium-Family Controlled
6	Ecuador	Banco Solidiario	Banking	Large - Listed
7	Ecuador	Ecoelectric	Manufacturing	Medium-Family Controlled
8	Ecuador	NIRSA	Fishing	Large - Family Controlled
9	Peru	Copeinca SA	Fishing	Large - Listed
10	Peru	El Comercio*	Media	Medium-Family controlled
11	Peru	Bolsa de Valores de Lima	Stock Exchange	Large - Listed
12	Peru	Ajegroup - Grupo Embotellador Atic	Beverages	Large - Family Controlled
13	Peru	Graña y Montero SAA	Construction	Large - Listed
14	Venezuela	Banco Caribe	Banking	Large - Listed
15	Venezuela	Electricidad de Caracas	Services	Large - State-owned (since 06/2007)

**Tahuamanu SA and El Comercio were excluded from the analysis due to difficulties in obtaining relevant information*
Note: This table shows some characteristics about the 15 companies that took part on CAF's Pilot study, showing where the companies are incorporated; their names; the industry of their economic activity; type of company; and size and capital structure.

Document analysis using the companies annual reports for the years 2005, 2006 and 2007 is used to investigate how companies report the implementation of corporate governance principles and how the adoption of principles affects the way these companies are managed and controlled. Annual reports from companies that took part in CAF's pilot study are included in the analysis. Two companies had to be excluded from the analysis due to difficulties in obtaining their annual reports, resulting in a final sample of thirteen companies. The analysis reports the frequency of certain elements of corporate governance in the annual reports.

7.1.5 Events

Taking into account the importance of events such as conferences, workshops, forums and training breakfasts as a means to promote and train companies in the practices of corporate governance, the researcher attended a number of events organised by CAF's counterparts; some of these events were also sponsored by CAF. Generally, the events aim to provide an updated analysis of the current situation, emphasising the lessons learned in the process of reforms and implementation of effective corporate governance practices, both in family businesses, state-owned enterprises, and listed companies. Usually prominent local and international speakers are invited to these events. The audience contains members of the local business community and neighbouring countries as well as academics, students and local and national government representatives. Details of events attended are provided in Table 7.4

Table 7.4 List of Events Attended

No.	Country	Organiser	Topic	Date
1	Colombia	Supersociedades	Workshop -Training CG Advisers	05/09/2008
2	Ecuador	Quito Stock Exchange	Workshop -Training CG Advisers	11/09/2008
3	Colombia	DNP, LEED and CAF *(1)*	Strategies for Efficient local Development	16/09/2008
4	Colombia	Supersociedades	Why Corporate Governance?	17/09/2008
5	Colombia	La Republica	Effective Administration for Family Businesses Seminar	07/10/2008
6	Colombia	Universidad Minuto de Dios	Corporate Governance in Family Business	05-06/10/2008
7	Colombia	Universidad de los Andes	International Seminar about Postgraduate Education	12/11/2008
8	Colombia	Confecámaras	International Corporate Governance Seminar	25/11/2008

(1)DNP – Colombian Planning Department
LEED – Local Economic and Employment Development (OCDE)
CAF – Andean Development Corporation
Note: This table shows a list of the corporate governance events attended by the researcher.

Information gathered at these events enriches the analysis with relevant data provided by key speakers as well as the material used in their presentations. It also enhances the analysis with information given by business persons who attend the events and who shared their experiences of the process of implementing corporate governance standards in their organisations.

The events' speakers included academics, managers, researchers, experts, and officials from regulatory organisations in the countries of the region. Entrepreneurs shared their experience in implementing corporate governance practices.

Additionally, data has been gathered from documents provided by some of those interviewed or collected at the events attended. These documents include business and academic publications and instructional booklets produced by CAF. The results of a survey on the implementation and compliance with corporate governance practices at a country level are also included.

7.1.6 Survey

Building on the collaboration with one of the organisers of an event attended by the researcher, a questionnaire survey was distributed to the event's participants and eighty completed questionnaires were collected. Among those who participated in the survey are consultants, business people, managers, directors, and students. Table 7.5 shows the proportion of those who answered the survey for each category.

Table 7.5 Survey respondents

ACTIVITY	No.	%
Consultants	42	52.50
Business Persons	22	27.50
Other	16	20.00
TOTAL	**80**	**100**

Note: this table shows a description of the individuals that answered the mini survey carried a out by the researcher at the Confecámaras, International Corporate governance Seminar,Bogotá (Colombia) 25, November 2008.

A copy of the questionnaire is included in Appendix 7.1 and 7.2. The form consisted of seventeen questions in three sections, the first section asked the respondents to indicate their occupation; the second section has ten questions that invited the respondents to express their opinions about general concepts of corporate governance, such as the definition, benefits expected from implementation, accountability and legitimacy that could be achieved if an organisation applies the principles; as well as questions about CAF's activities promoting good practices in the region: The third section contained six questions about the structure of the board and management and of conflicts of interest. Respondents answered the questions using a 1 to 5 Likert-scale, where a 1 meant strongly agree and a 5 strongly disagree. The findings from all these information sources are used in the following sections to establish the context of corporate governance in the Andean region.

7.2 CAF's role in improving corporate governance in the Andean region

CAF has two dimensions. First, it is a development bank whose founder shareholders are the five Andean countries. One of its objectives is to lend money and, as a development bank, it has to develop its own operations and also support technical cooperation programs. Second, CAF is committed to sustainable development and regional integration. Part of CAF’s profits each year are devoted to enabling CAF to grow and to be able to lend money as a financial intermediary in the five countries; some of these profits are dedicated to investment programs that are intended to support a variety of issues such as public policy, environmental issues, social issues, and competitiveness. Within the competitiveness programs are technical cooperation programs and, integrated with this, is the support of corporate governance developments, and the program to promote the implementation of good corporate governance practices in the Latin American Andean Region. This includes activities such as supporting programs by CAF’s counterparts, governance institutes and others to train corporate governance consultants strengthen board of directors’ competencies and enhance the leadership skills needed to build business capacity and promote economic growth. CAF also guides the implementation of corporate governance codes and has developed software for measuring compliance with internally accepted standards. CAF’s aim is the dissemination and reinforcement of best practices of corporate governance in the region to develop optimal levels of competitiveness and contribute to the strengthening of the Andean financial markets. This may also help organisations to understand that corporate governance is about the relationship with all their stakeholders and therefore be accountable to all of them. Also a well managed organisation may project a good image to its stakeholders.

CAF issued the Guidelines for the Andean Corporate Governance Code (LCAGC) in 2005. LCAGC has been widely disseminated in different forums since it was issued, and has been recognised in international venues such as multilateral agencies’ Roundtables on Corporate Governance in Latin America, organised by the OECD, the International Finance Corporation (IFC) and the Global Corporate Governance Forum (GCGF), in locations such as Rio de Janeiro, Buenos Aires, Mexico DF, Santiago de Chile and Lima. LCAGC is divided into five sections: (i) Rights and Equitable Treatment for Shareholders; (ii) The General Assembly of Shareholders; (iii) The Board of Directors;

(iv) Financial and Non Financial Information; and (v) Settlement of Disputes (a brief summary of the Andean Code in included in Appendix 1.1). These areas are covered in fifty-one measures which introduce ninety-five recommendations (provisions) which serve as best practice for guiding the process of implementing corporate governance in the region, but at the same time recognise existing information asymmetries, legal frameworks and the depth of financial markets in each country.

CAF's effort in promoting the implementation of corporate governance principles has helped people to know more about the topic. However, not everybody has given the same importance to corporate governance matters, as interviewee B4 pointed out:

> “There are still many who believe that this is just a fashion or that the issue does not affect them. Thus, many think that they already have good corporate governance and that they do not need to invest energy, time and money to put something on paper that they are already doing”.

Instead of imposing codes on countries, CAF is working with local partners in every country, relying on local knowledge as an approach to reform. A list of CAF’s regional partners can be seen in Table 7.6. CAF Counterparts in each country identify their own corporate governance needs and adopt standards to reflect local realities and challenges. First an assessment is done by CAF by consultation with these local partners, to decide what they want to do, and what can be done. As each country is different from the other, different initiatives are proposed for each country. For example, in Peru CAF is supporting the competition run by PROCAPITALES, which is one of CAF’s counterparts in that country. Additionally, CAF supports Peruvian regulators updating the country’s corporate governance code. CAF is also keen to see the implementation of corporate governance principles in Venezuelan and Colombian state-owned businesses. In addition due proportion of family-owned and small business in the Andean countries, CAF issued the Corporate Governance Code for Closed Capital Companies. Indeed, CAF’s counterparts are running different activities to support the implementation of corporate governance principles by SME in Bolivia, Colombia, Ecuador and Venezuela.

Additionally, CAF, in conjunction with its local partners, governments, businesses and members of the academic sector involved in corporate governance offers non-reimbursable technical and financial assistance for the realisation of related corporate governance activities. Specifically, CAF’s programs include the following activities:

- Conceptual contributions, such as writing and publishing standards and guides on corporate governance for companies.
- Design forums and events, and publication of material.
- Implementation of pilot cases of good practices in different types of companies.
- Monitoring and measurement studies related to the adoption of good corporate governance practices.

Table 7.6 CAF partners and local projects

COUNTRY	ORGANISATIONS	LOCAL PROJECTS
Bolivia	Bolivian Stock Exchange (BBV)	➢ Workshops and seminars ➢ Journalist Workshop
Colombia	Confecámaras Colombia Stock Exchange (BVC) Superintendence of Finance	➢ Workshops and seminars ➢ Case studies ➢ Reports and brochures
Ecuador	Quito Stock Exchange (BVQ)	➢ Workshops and seminars
Peru	PROCAPITALES UPC- (Peruvian university of Applied Sciences) CONASEV – (National Commission Overseeing Securities Firms)	➢ Workshops and seminars ➢ Case studies ➢ Reports and brochures ➢ Competition ➢ Supervision
Venezuela	AVE- (Venezuelan Association of Executives)	➢ Workshops and seminars

Note: this table shows a description of CAF's counterparts in the Andean region and some of the activities these organisations run with CAF support.

According to interviewee B4, CAF's partner in Bolivia has always been the Bolivian Stock Market (Bolsa Boliviana de Valores - BBV), with whom some work involving the insurance sector has already been done. However, there have been some recent difficulties with BBV to identify any new projects, but it is likely that CAF may sponsor an event, such as a workshop or conference. CAF are also looking to work with universities to help build degree programs that include corporate governance education.

The Colombian Stock Exchange (Bolsa de Valores de Colombia - BVC) is one of CAF's partners in Colombia. According to Interviewee B1, the two organisations traditionally have worked together in the development, issue, and implementation of corporate governance principles. Confecámaras (The Colombian Confederation of Chambers of Commerce) is also CAF's partner in dissemination forums, rather than in the implementation that CAF normally has with other counterparts such as BVC and the Colombian Superintendence of Finance.

In Venezuela, Interviewee C4 notes that the emphasis is on family businesses, and CAF has agreed with its partner the Venezuelan Association of Executives (AVE) to hold workshops for SMEs using existing material such as its corporate governance guidelines, and assessment software which aims to support companies interested in assessing their corporate governance practices. In addition, AVE is currently developing an academic program with particular emphasis on corporate governance for SMEs. CAF also offers a software application, which allows them to obtain a diagnosis and identify priority areas for action. The application allows a user, knowledgeable or not of corporate governance to see the extent of compliance with a given corporate governance standard contained in the Andean Corporate Governance Code. The corporate governance evaluation software is now used for companies in the Andean region, and is also used as the basis on self-evaluation questionnaires distributed by regulators such as the Superintendence of Companies in countries such as Bolivia, Colombia, Ecuador and Peru. Companies using this may be doing so for accountability purposes or for legitimacy of their activities.

CAF's partner in Ecuador, the Quito Stock Exchange (Bolsa de Valores de Quito -BVQ) has been delivering corporate governance workshops with support from the Multilateral Investment Fund (MIF) as outlined by Interviewee C3. CAF has complemented this effort by supporting a research centre in the field and has structured training courses in universities on the topic of corporate governance. In addition BVQ, through an initiative called the 'Good Corporate Governance Program' in Ecuador, has agreements with nine universities to include subjects in their curriculum which will serve to develop the skills of students to apply principles of good governance in companies. This program is sponsored by the Quito Stock Exchange (BVQ), the MIF, and the Inter-American Development Bank (BID). An international consultant, IAAG[38], has prepared the academic basis of these courses.

[38] IAAG - Consultoría & Corporate Finance is a firm specialised in Strategic Consulting and Corporate Finance. IAAG focus are emerging countries in Latin America, Eastern Europe, Africa and Asia, working in programs sponsored and financed by Multilateral Agencies as well as advising the private Sector and Government Agencies.

In general, according to interviewee B2, CAF's efforts have been particularly well received by companies as they have started to realise what the topic of corporate governance is about. More companies are showing an interest and some have decided to take part in the implementation programs. The diffusion of corporate governance principles has been disseminated through forums, conferences, workshops, and lectures in colleges and universities, as noted by Interviewee B4. The programs have had very good participation rates, and many companies have participated. Entrepreneurs are invited to present their own situations in relation to the issue of corporate governance. Large companies that have implemented corporate governance principles under CAF's pilot study such as the Electricidad of Caracas, and Bancaribe in Venezuela, MAC in Colombia, or Banco Solidario in Ecuador have also presented their experiences several times at corporate governance events.

CAF's working partners that act as local counterparts in the Andean countries have also been able to share their ideas about the financial supervision and regulation of companies as noted by Interviewee B3 and are able to apply CAF's recommendations in accordance with their country's internal regulations; as Interviewee B3 suggests:

> "Andean guidelines are a set of recommendations. However, companies have to comply with their country's law. For example, in some cases, it is recommended that shareholders cast their vote in a General Meeting even it they are not present at the Meeting, which is known as 'a *remote vot*e', this is to allow for greater access to decision-making. But there are some cases where the regulation of a country does not allow *remote vote* – for example, in Colombia. Therefore, this is a recommendation that cannot be used universally".

According to Alfredo Ibargüen[39], it is important that the regulatory framework, while not explicitly ruling on the mandatory nature of certain international practices, at least does not prohibit the adoption of standards of corporate governance For example, in Colombia, the electoral quotient system to choose members of the board makes the appointment of independent members difficult. In Ecuador electronic voting in Assemblies is not a recognised medium. Thus, implementing corporate governance practices need to vary to accord with the regulatory framework. Thus, the consulting work on corporate

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[39] Alfredo Ibargüen, is a consultant for the Spanish organisation IAAG, which has been working with CAF in the development, implementation and training on corporate governance issues in the Andean Region. The remarks were made at the Quito Stock Exchange Workshop, 'Implementation of Effective Corporate Governance Practices', Guayaquil (Ecuador); 11 September 2008.

governance is particularly important, to provide alternatives to allow for the absence of specific practices. Interviewee B1 also suggests that: "It is not easy to choose guidelines that suit a particular country and its economy best".

According to interviewee D1, to roll out corporate governance at country level:

> "CAF's intention is that the countries of the Andean Community adopt a code of good governance. To arrive at this code of good governance businesses need to adopt the model of corporate governance promoted by CAF and then jump to a country code of good governance".

In general, it is acknowledged through the region that there is a high degree of acceptance of the Corporate Governance guidelines, the Andean Corporate Governance code, issued by CAF. For example among the respondents to the survey mentioned in section 7.1.5 above, 89.3% agree that CAF is helping with the implementation of good corporate governance (CG) standards. However, as shown in Table 7.7, 20% of those grouped in others expressed some disagreement to the view that CAF is helping with the implementation of corporate governance in the Andean region.

Table 7.7 CAF Corporate Governance implementation

Respondent	CAF is helping CG implementation					Total
	Strongly agree	Some agreement	Agree	Some disagreement	Strongly disagree	
Entrepreneur	42.1%	26.3%	15.8%		15.8%	100.0%
Adviser	52.5%	27.5%	12.5%	7.5%		100.0%
Student	33.3%	50.0%	16.7%			100.0%
Other	30.0%	50.0%		20.0%		100.0%
Total	45.3%	32.0%	12.0%	6.7%	4.0%	100.0%

Note: This table reports the questionnaire survey results given out at an event in Colombia

Equally, as shown in Table 7.8, 90.8% of the survey respondents feel that CAF's Corporate Governance Guidelines are beneficial to companies and stakeholders. However, the entrepreneurs are the ones who showed more disagreement with this view it is not known why these entrepreneurs attended the event as they were both sceptical of CAF's code and its implementation.

CAF's activities have included the publication of brochures and other literature; awareness seminars; conferences; forums; training workshops for consultants, family entrepreneurs, and journalists; training for managers; documenting cases; and contests.

Table 7.8 Benefits of CAF's Corporate Governance Guidelines

Respondents	CAF's CG Guidelines are beneficial					Total
	Strongly agree	Some agreement	Agree	Some disagreement	Strongly disagree	
Entrepreneur	40.0%	35.0%	5.0%	10.0%	10.0%	100.0%
Adviser	52.5%	32.5%	10.0%	5.0%		100.0%
Student	50.0%	33.3%	16.7%			100.0%
Other	40.0%	40.0%	10.0%	10.0%		100.0%
Total	47.4%	34.2%	9.2%	6.6%	2.6%	100.0%

Note: This table reports the questionnaire survey results given out at an event in Colombia

7.3 Other issues affecting corporate governance development in the region

Other issue that may impact the implementation of corporate governance in the Andean regions is that of politics. The political situation in the Andean region is particularly troubled, with a lasting turbulence that originates from government ideology and the style of the presidents of the countries that lead to expectations for constant change in the rules of the game as policies go along with who is in power. There are also other factors to be taken into account, such as the sudden nationalisation of companies (Bolivia, Venezuela), apparent restrictions on the freedom of information (Venezuela), and the constant uncertainty in the political relations between countries. It is therefore difficult to establish the impact of these issues on the corporate governance programs as highlighted by interviewee B3:

> "…there is concern about the actions of rulers. This is the situation of individual countries, and might cause some distress among companies, but in the medium and long term, companies need to work on issues that are important to them, such as corporate governance, which is an issue that has not yet had much diffusion and it is possible that has become less important and has attracted less attention than other things that are happening in the environment".

In Venezuela, for example, a very important initiative has been the formation of cooperatives, which have been assigned resources but are often unable to generate a profit or create value (Interviewee C4). This creates a sense of frustration because sometimes the recipients of the funds do not have the tools or capacity to efficiently use those resources for the benefit of the community. These organisations have been formed as cooperatives in an 'anti-capitalist ideal'. Therefore, it would be preferable if some of these resources were channelled to give people education and training to help them succeed in these organisations, or any other types of business. Interviewee B4 believes that training on dealing with good corporate practices may help Venezuelan cooperatives in reaching their objectives as this interviewee stressed: "….at the end of training and governance, tools are needed in all scenarios".

Additionally, the current political turmoil has affected the interest in corporate governance in most parts of the region; the concern of shareholders, directors and management has been directed by a feeling of urgency to issues not necessarily related to the management of their businesses. Companies may need to change quickly, as those who survive are those that adapt with greater speed and versatility to the structures in which they have to act. According to interviewee B1:

> "Corporate governance is seen as a shield for the turbulence cause by the political trends in the region that could jeopardize business structures. Through the implementation of corporate governance practices, companies are in a better position to accommodate the turn of the political leadership of a country".

Political trends in the Andean region countries may affect, in one way or another, the economy at both a regional level and an individual country level. This, in turn may be reflected in standards and practices related to the management of the business, and from this study it appears that corporate governance practices are touched in some way by these trends. This is evidenced in the analysis of the annual reports. For example, in the opening paragraph of the 2006 report to shareholders, the Chairman of Seguros Bolivar (a Colombian company that took part CAF's Pilot Study) expressed his view about recent events in that matter:

> "It is important to refer to the processes of governments with a leftist trend in Bolivia, Brazil, Argentina, Ecuador and Venezuela although this has not prevented Colombia continuing with a quite satisfactory relationship with these countries in political, economic, social and cultural aspects".

A year later, in the reporting year 2007, Seguros Bolivar Chairman declared:

> "Affairs, at some point came under strain with countries like Ecuador, but the Colombian government maintained a line of searching for building international relations in political, economic, social and cultural [dimensions]. Disappointingly, this year ended with the unfortunate weakening of bilateral relations with the government of President Hugo Chavez, as a result of the demonstrations of the Venezuelan president against President Álvaro Uribe Vélez (Colombia), during the mediation made by President Chavez on the release of hostages by FARC. Venezuela confirmed its decision to stay outside of the Andean Community of Nations (CAN) as a manifestation of the differences between the two countries" (p 5).

Another example of the effects of political trends in the region and the actions of regional political representatives is the Venezuelan electricity supply company that was one of the companies that took part in CAF's Pilot Study. As noted in the 2007 Annual Corporate Governance Report of Electricidad de Caracas, a publicly held utility supplier until the end of 2006, its nationalisation process was completed at the end June 2007:

> "Nationalisation led to regulatory compliance to controls of State institutions, processes that we have been adapting very successfully. The learning curve has been exceptional; our units are currently guarantors of the appropriate use of public funds. At present, since nationalisation, 'the new' Electricidad de Caracas reinforces these activities through the progressive adaptation of the principles of corporate governance for the state-owned character which the institution now has" (p 2).

According to the interviewees, current regional political trends affect the development of corporate governance with both right wing and left wing leaning governments. However, corporate governance is not necessarily incompatible with a right or left leaning philosophy; state-owned, private and public companies should all be transparent, produce reliable results and be efficient. None of these attributes are incompatible with a left or right leaning government as Interviewee C4 believes:

> "What happens is that it is a matter of opinion, but in any case, corporate governance is an issue that is outside of an ideological concept, whether economic or political; corporate governance is transparency, accountability, efficient management and available resources of all kinds. It is necessary in whichever system".

Equally, interviewee B4 mentioned:

> "I do not believe the issue of corporate governance is at all incompatible with one of a right or left leaning ideas, because it may be an entirely public organisation or a private company that should want to be transparent and must produce results and want to say that its results are reliable, and must be professional, none of these attributes are incompatible with the left or right. The left has some ideas of state-owned or state actor, but it favours state-owned enterprises as efficient generators of a states' value".

There was some agreement amongst the interviewees that nationalisation and privatisation processes could affect the attitude towards corporate governance. However, it is important to be prepared to adapt corporate governance systems to meet the circumstances of companies at a specific time, and most considered the corporate governance of a privately-owned company to be similar to that of a publicly-owned company. When a company is nationalised there is the need to develop practices to address particular issues; for example, the role of the state as owner, and there is also the need to provide a clear mandate to the board of directors, who will be in charge of not simply generating the highest possible value, but must also demonstrate compliance with clear social objectives. An example of this situation is given by interviewee C4 pointing out that:

> "The Venezuelan government has a clear socialist orientation, openness, and distribution of resources in a specific way; it also needs to plan very well to where it directs its resources. Institutions that receive resources should be equipped with adequate tools to make efficient use of the resources allocated because these are assigned to be productive, so organisations can continue to grow, occupying space at national level, so corporate governance is as valid in communism or capitalism or in any system. The handling of resources is not an ideological issue but when used well, all the country might grow".

According to interviewees B1, B4, C1 and C4, this may be why there is no resistance to corporate governance in left leaning countries. In Venezuela, because of the political situation new laws are issued fairly frequently and procedures must be adapted all the time. However there is a positive change in attitude, even by the government, because the National Securities Commission (CNV, for its name in Spanish), the government organisation that supervises the securities markets in Venezuela, has been involved in ongoing activities aimed at the development of corporate governance, and one of its strategic objectives is to open the securities markets for small businesses, something it calls 'the democratisation of capital'.

Equally, it is the opinion of Interviewees C1, C2 and C4 that the political trends in the region affect the implementation of corporate governance principles. The recent Venezuelan situation is an example. Due to the current president's socialist attitude it is very difficult for companies to have their own company objectives - especially for public companies or state-owned companies, as the president recognises that there are many needs among the population such as health care for the community; all organisations have to take these into account. For instance, the state-owned oil company PDVSA, whose role is to explore and extract oil, has to give subsidies to the poor, and import food to distribute if the president says that PDVSA should do so. These are additional targets for organisations and this makes it more difficult for firms to achieve their corporate objectives. Further, as the state is less strict in measuring companies' performance, it may be that a company is not operationally viable. However, where the poor are benefiting from a company's activities it may not be expected to explain any operational failures. Interviewee B3 also pointed out that most people recognise that companies need to be efficient from a financial point of view in order to provide social benefits. If companies lose their capital they will not have enough resources to invest. At the same time this makes it very difficult to achieve poverty alleviation and improve the social condition of people. Therefore, companies must be economically efficient; but the political climate may affect the way companies are seen. Some interviewees, such as D2 in Ecuador, evaded talk about the political trend undergoing in his country at the time, saying:

> "The company is not involved in the crisis and is constantly working for our country, further consolidating its leadership, increasing its international presence and it is an example of social responsibility".

Additionally, the annual reports of the one of the companies that took part in CAF,s pilot study show how after nationalisation the structure of the board was changed resulting in the reduction of the number of directors, affecting especially the proportion of independent directors.

Conversely, when a state company is privatised, institutional practices must be developed, for example, shareholders' meetings must be regulated, and it must be ensured that internal and external audits are of the best quality, also there is the need to develop certain procedures for the operation of the boards, such as consideration of the establishment of an audit committee and, depending on the size of company, other committees that may be needed; as indicated by interviewee B4:

> "Corporate governance should be a topic discussed when there are changes from one system to the other, and it should be considered in both private and public sectors. Therefore, it does not matter whether an organisation is public or private".

In the Andean region, the adoption of corporate governance principles is clearly advancing, although not necessarily at an overwhelming pace as sometimes the process falls by the wayside due to waves of privatisation or nationalisation and people need to deal with other things. For example, Mario Marcel[40] in his speech about the role of

[40] Mario Marcel, Manager at the Office of Institutional Capacity and Finances (BID), Speech at the conference – Strategies for Efficient Local Development, held by the Colombian Planning Department (DNP), the Local Economic and Employment Development (LEED) and CAF, Bogota, 16-09-2008.

multinational organisations in helping local authorities to fulfil their responsibilities and on achieving development for their communities expressed his view on macroeconomic issues, such as the revaluation of currency, when people may not be thinking about softer technologies such as improving management. Day to day there may be different immediate challenges, such as dealing with high inflation and export restrictions. However, in macro-environments that have become more relaxed, or where there is a need for additional capital injections, people can become more concerned about issues of corporate governance or corporate social responsibility.

Further, according to interviewee C2 “good corporate governance may well help to protect the capital of state-owned companies from the abuses of politicians”. For example, this could be the case in Colombia where EMCALI[41], a utilities company, which has not yet implemented corporate governance principles, is experiencing particular difficulties. The administration has identified corporate governance measures to be implemented and it is hoping that these measures will help the company to be more efficient and sustainable. A very different case is EPM (Empresas Publicas de Medellín), a state-owned organisation, where the mayor and the councillors are committed to ensure the sustainability of the organisation. During his period in office, the mayor has responsibilities similar to a listed company CEO and stated: “EPM is one of the best examples of the impact that the implementation of corporate governance has in a state-owned company”. It is also the view of other participants such as interviewee A3, who argues that corporate governance should be maintained regardless of the owner, whether private or public. The only difference sometimes is that in the case of the state sector it is not clear as to who is the owner; whether a ministry, an autonomous institution, or a kind of holding company. There are different patterns, with some particularities for state-owned enterprises, but there are standards of corporate governance for this type of business and there should not be any differences in their objectives. In the same way, Interviewee B3 considers that anyone who says that the discussions on changes to the constitutional law that take place in the Ecuadorian Constituent Assembly will not affect

[41] Empresas Municipales de Cali – EMCALI is a utilities company from the second largest city in Colombia. On April 2000, due to cumulated losses, the Superintendence of Public Services ordered its intervention. As part of management efforts to strengthen the organisation, and facing is return to the Municipality’s control EMCALI requested CAF’s technical assistance to implement Good Corporate Governance Principles.

even small entrepreneurs is not recognising the existence of permanently active communication among individuals. In particular, Interviewee C3 noted:

> "….the discussion of political affairs in Ecuador has influenced, for better or for worse, the development of the Good Corporate Governance Program, which is conducted by the Quito Stock Exchange, with financial support from the Multilateral Investment Fund and the Inter-American Development Bank".

Finally, according to Eugenio Marulanda (Confecámaras President), the most appropriate exit from the tremor of the Latin American political map is an alliance between both the political and private sectors. Marulanda believes that this is something which left and right wing governments are doing. He thinks that the private sector should re-think the politics of Latin America in light of the current situation. Nothing is achieved by building solid companies if these have to operate in fragile environments. Marulanda's idea is that:

> "We need management and business leaders committed to the public, to ethics and politics. Corporate governance is only viable after authentic partnerships between public and private sectors have been reached".

7.4 Corporate governance factors

The work that CAF and its counterparts are doing shows a growing interest in implementing the principles governance. Before heading into an assessment of corporate governance developments in the Andean region it is important to understand the meaning of the concept in the area and how it can affect growth and development. Corporate governance is often viewed as the relationships and structures that determine corporate direction and performance. The relationship among stakeholders such as owners, managers, creditors, employees, customers, and suppliers can be critical. Corporate governance frameworks often depend upon the regulatory, legal, institutional, and ethical environment of an organisation.

The views of some of those who were interviewed to some extent are comparable to those who responded to the survey carried out by the researcher. The survey results show that most respondents (73.4%) believe that corporate governance is about the relationship between the board and management; 68.1% of the entrepreneurs, 73.2% of the advisers, 83.4% of the students, and 80% of others expressed this view (Table 7.9). These results are additional indications that a good number of the participants in this research regard corporate governance from a narrow view.

Table 7.9 Corporate governance and the relationship between the Board and management

Economic activity	CG is about Board & management relationship					
	Strongly agree	Some agreement	Agree	Some disagreement	Strongly disagree	Total
Entrepreneur	22.7%	22.7%	22.7%	13.6%	18.3%	100.0%
Adviser	24.4%	26.8%	22.0%	19.5%	7.3%	100.0%
Student	50.0%	16.7%	16.7%		16.7%	100.0%
Other	30.0%	20.0%	30.0%	20.0%		100.0%
Total	26.6%	24.0%	22.8%	16.5%	10.1%	100.0%

Note: This table reports the questionnaire survey results given out at an event in Colombia

A similar number 70.9% of the survey respondents see corporate governance as the system by which the activities of a company are managed and controlled (Table 7.10). It is important to notice that 31.9% of the entrepreneurs do not agree with the view that corporate governance is about the relationship between the board and management.

Also 54.6% of these entrepreneurs do not agree with definition of corporate governance as the system by which the activities of a company are managed and controlled (Table 7.10). It can be concluded that from the answers given that entrepreneurs do not wish to relinquish their control that easily.

Table 7.10 Corporate governance and system by which the activities of a company are managed and controlled

Economic activity	Management & Control					
	Strongly agree	Some agreement	Agree	Some disagreement	Strongly disagree	Total
Entrepreneur	27.3%	4.5%	13.6%	27.3%	27.3%	100.0%
Adviser	34.1%	31.7%	12.2%	12.2%	9.8%	100.0%
Student	16.7%	50.0%	16.7%		16.7%	100.0%
Other	30.0%	40.0%	20.0%	10.0%		100.0%
Total	30.4%	26.6%	13.9%	15.2%	13.9%	100.0%

Note: This table reports the questionnaire survey results given out at an event in Colombia

In addition, several of the interviewees highlight that corporate governance is about both formal and informal practices, with the latter having greater importance since companies in the region are usually involved in activities of an informal nature. Informal practices persist because interpersonal trust compensates for a popular distrust of financial institutions. Informality is also commonly associated with corruption and the absence of the rule of law which works against the foundations of good practices as informality may allow people to bend practices to their advantage. This may be why interviewees B1 and

B2 stress the word 'informal' when they say that corporate governance should include both formal and informal rules. Formal activities consist of set rules, organisational procedures and structures. According to interviewee C1, in some companies, such rules must be strictly followed but in others "it may be little more than an empty formalism". Equally, practical experience shows that no company is ever completely rule-bound; instead, companies usually present some mix of both formal and informal arrangements. Accordingly, Interviewee B1 recommends:

> "….when attempting to legislate for a company and to create a formal structure, it is important to recognise informal practices in order to create workable procedures".

Equally, Interviewee B2 stated that:

> "Corporate governance is the set of formal and informal rules – and I stress the word informal in developing countries – that regulate a dual relationship, the relationship between managers and owners on the one hand and the relationship between majority and minority shareholders on the other hand. This is to say that all companies have a form of corporate governance, because all of them have a way in which the owners are related to the administration, or which relate majority and minority shareholders, and to the extent that this is true, you can say whether companies have good business practices or have bad practices".

Interviewees A4, B1, B3, B4 and C4 generally believe that standards of corporate governance should extend beyond just the relationship between managers and owners to a broader group of individuals affected by a company's activities. Also Patricio Peña, Quito Stock Exchange's President, defines corporate governance as:

> "The set of 'institutions' that govern relations between management and those who invest resources in companies such as partners, shareholders, creditors and suppliers".

Interviewee B3 goes a bit further defining it as:

> "The formal and informal practices that govern relationships within the company and all its stakeholders including shareholders, the providers of finance, suppliers, employees, customers, government, and any other entity that requires or relates to the company."

These definitions are based on the view that successful companies are those that recognise that they have responsibilities to a range of stakeholders. The process of engagement creates a dynamic context of interaction, mutual respect, dialogue, change, and groundwork for transparency and accountability. Moreover, such diverse stakeholders make competing accountability claims, as noted by interviewee B1:

Corporate governance is "how decisions are made and how accountability is discharged".

And by interviewee C4:

"Corporate governance is transparency, accountability, and access to basic information….attention to interest groups or stakeholders".

Interviewee B1 recognises the importance of accountability within corporate governance processes when he pointed out that:

"Companies should have both a code of conduct and transparent processes with clear accountability towards their stakeholders, not only to the majority and minority shareholders, but also the responsibility towards the community, creditors, government and civil society in general this reduces the risk for investors that want to get involved with that company as this could ultimately mean that companies may have lower costs of capital, as they have better decision-making processes"

Further, some participants acknowledged that companies are today faced with a wide array of challenges that mean that senior executives and managers need to be able to deal with issues including greater accountability, changing strategies, corporate governance codes, workplace ethics, stakeholder consultation and management. This reflects what is stated by Salvador (2007)[42] in her study, about the progress on the adoption of corporate governance principles by Ecuadorian companies, she points out that:

"Good Corporate Governance is a new tool to reduce, and in many cases solve, management problems of companies; it is also used to project stronger corporate responsibility in the global economy" (p 6).

According to the results of the survey as noted in section 7.1, 85.9% of the respondents agreed to some extent that compliance with corporate governance principles makes it easier for company management to be accountable to all their stakeholders, which answers research questions 1 and 2, (Table 7.11).

[42] The survey was carried out by Maria Soledad Salvador a BVQ's (Quito Stock Exchange) official. The project was financed by the IMF and the Inter-American Development Bank (BID). The survey was undertaken in the three Ecuadorian largest cities: Quito, Guayaquil and Cuenca; 67 companies of a sample of 104 answered the questionnaire.

Table 7.11 Corporate Governance makes it easier to be accountable to stakeholders

Economic activity	CG helps accountability to stakeholders					Total
	Strongly agree	Some agreement	Agree	Some disagreement	Strongly disagree	
Entrepreneur	45.5%	9.1%	22.7%	9.1%	13.6%	100.0%
Adviser	55.0%	22.5%	12.5%	5.0%	5.0%	100.0%
Student	50.0%	16.7%	16.7%	16.7%		100.0%
Other	40.0%	50.0%		10.0%		100.0%
Total	50.0%	21.8%	14.1%	7.7%	6.4%	100.0%

Note: this table shows results from the 'mini' survey carried out in Colombia by the researcher

Similarly 85.8% of the survey participants agree to some extent that management is accountable to all stakeholders, and also answers research questions 1 and 2 (Table 7.12).

Table 7.12 Management accountability to stakeholders

Economic activity	Management accountability to stakeholders					Total
	Strongly agree	Some agreement	Agree	Some disagreement	Strongly disagree	
Entrepreneur	27.3%	31.8%	18.2%	18.2%	4.5%	100.0%
Adviser	51.3%	20.5%	20.5%		7.7%	100.0%
Student	33.3%	33.3%		33.3%		100.0%
Other	60.0%	30.0%		10.0%		100.0%
Total	44.2%	26.0%	15.6%	9.1%	5.1%	100.0%

Note: this table shows results from the 'mini' survey carried out in Colombia by the researcher

In addition to the above definitions there are those that see corporate governance as a wider concept which includes all the activities that a company needs to perform to be able to show that is well managed. For example, the Corporate Governance Code of *Seguros Bolivar* a Colombian insurance company that took part in CAF's Pilot Study, reads:

> "Corporate governance standards are a set of rules built-in of existing national laws on the subject, the companies statutes and their relevant amendments, the Code of Good Governance, the rules for the General Shareholders Meeting, the Board of Directors rules, the Code of Conduct, the Manual on Prevention of Money Laundering and Financing of Terrorism Handbook, rules for dealing with Conflict of Interests, use of inside information, and the other provisions for ethical and conduct issues set out in Code corporate governance" (p 1).

Equally, members of CAF staff stress that good corporate governance practices contribute to better transparency and mitigate the problems of asymmetric information that characterise the financial markets. In these circumstances, good corporate governance practices are essential for companies' to access to capital markets. However, it was mentioned by several individuals that for many reasons companies find difficult to be transparent or show their accountability. Similarly, Interviewee C3 expressed that corporate governance projects the idea of:

> "…. accountability, transparency, clarity, presentation and access to information, which are things that add value to the business, making it more profitable, more productive, having more clients, better functioning, having more access to credit".

Interviewee B2 feels that this does not occur in practice. He notes that company senior management do very little to be accountable to the boards of directors and in turn board members have very little accountability to the shareholders. This low accountability leads – to mismanagement or inappropriate management of the resources of companies. Also, he considers that, in general, Latin American countries are not transparent, that there is a lot of corruption and this is not conducive to the handling of governance problems.

An additional issue is the perception by company stakeholders on whether the existence, activities and impact of an organisation on society are justifiable. This is associated by some participants with corporate legitimacy or the state of having valid socially acceptable and trustworthy authority. However, there is no evidence to prove whether disclosures actually work in terms of changing the perceived legitimacy of an organisation. Juan Carlos Herrera[43] argues that:

> "A company should clarify all the interrelationships in which is involved, and distinguish between those that are due to what is within its habitual activity and those that are needed to improve the community in which it conduct its operations. The proposition is to combine business ethics to get better results for stakeholders".

Some interviewees argue that corporate governance and corporate legitimacy are necessary for stable economies. However, there is some understanding and a growing acceptance of the subject. Interviewee B2 suggests that:

> "The issue of legitimacy has to do with accountability. The challenge for those working on the development of corporate governance practices in the region, is the need to insist on legitimacy, accountability, and transparency, all these things are good and do not represent any danger for organisations".

Additionally, Interviewee B1 presents a relationship between the terms transparency and legitimacy when he states that: "Transparency and legitimacy are both shown in the same

[43] Juan Carlos Herrera, independent consultant, speech at the "Why Corporate Governance & CSR Workshop" – Superintendence of Companies, Bogotá, 17-09-2008

way; legitimacy comes from the transparent handling of things". Interviewee B1 also mentioned the procedures used by companies to earn their legitimacy. For example, he pointed out that:

> "When companies do the right thing they increase their reputation, there are different initiatives such as the 'best place to work'. All these activities generate a good image among employees, customers, suppliers, and the community. This translates into good results".

In the same way Interviewee B2 argued that:

> "Corporate governance might improve company legitimacy and credibility, especially for those companies which have problems derived from bad administration/management or bad business practices. After implementing good practices, stakeholders may see a company as an organisation that has solved its problems and can start trusting the company again".

Equally, Table 7.13 shows that 83.2% of the survey respondents agree with the view that implementing corporate governance principles help to improve a company's legitimacy. Nevertheless, a sizeable proportion disagreed, especially the entrepreneurs or company owners who do not believe that corporate governance legitimates corporate actions. This is also another strong indication that corporate governance implementation is recommended as a way to legitimise company activities and answers the third research question.

Table 7.13 Corporate Governance and company legitimacy

Economic activity	CG helps company legitimacy					Total
	Strongly agree	Some agreement	Agree	Some disagreement	Strongly disagree	
Entrepreneur	36.4%	22.7%	9.1%	13.6%	18.2%	100.0%
Adviser	56.4%	17.9%	17.9%	2.6%	5.1%	100.0%
Student	16.7%	66.7%		16.7%		100.0%
Other	40.0%	20.0%	20.0%	20.0%		100.0%
Total	45.5%	23.4%	14.3%	9.1%	7.8%	100.0%

Note: this table shows results from the 'mini' survey carried out in Colombia by the researcher.

An example of a company wanting to show its legitimacy is EMCALI[44] a Colombian organisation which has been subject to the country's bankruptcy law (Law 550). For this

[44] Empresas Municipales de Cali – EMCALI is a utilities company from the second largest city in Colombia. EMCALI manages energy, water supply and telecommunications to a south western region of Colombia, serving over half a million of families. EMCALI is owned by the Municipality of Cali. On April 2000, due to cumulated losses, the Superintendence of Public Services ordered its intervention. As part of management efforts to strengthen the organisation, and facing is return to the Municipality's control EMCALI requested CAF's technical assistance to implement Good Corporate Governance Principles.

reason the organisation is under the control of a 'state administrator' and will only be handed back to the local administration when the central government considers that the organisation has paid all its credits and can be run efficiently. Managers have decided that the organisation can prove its viability to the government by implementing corporate governance principles. In this case a legal procedure states the rules that apply to civil servants, politicians or whoever is in charge of the administration of the municipality. This will require the compromise of actual and future administrators to follow the rules and not intervene in the running of the company[45].

7.4.1 Attitude towards corporate governance

CAF's counterparts have been assisting in the dissemination of its corporate governance principles through regional forums, seminars, conferences, and workshops, and leading the discussion on corporate governance issues. Ignorance of what it means to have good corporate governance has been the main obstacle stopping or slowing its implementation. As mentioned by Interviewee B1, some perceive the principles, norms and practices associated with corporate governance as a bureaucratic process that reduces the freedom of management to enact necessary reforms and do not see the benefits. Equally, Interviewee C1 argues that management may consider that a board of directors and a set of standards for decision-making conspire against their ability to control the company. Moreover, as mentioned by interviewee B4, managers of successful companies may be suspicious of attempting to change the "winning recipe" and therefore tend to stick to practices that have led to good performance in the past. In relation to the business cycle, during a period of economic crisis, concentration on corporate governance may seem like an extravagance and attention should focus on the imminent dangers arising from the crisis; while, in a period of expansion risks may not be detected in the medium term, but appear to be seemingly endless opportunities. Thus, managers may always find arguments to delay the implementation of corporate governance.

There is some agreement that the obstacles are still significant and that the structure of ownership, except in specific cases, still allows the administration of corporate affairs to

[45] In Colombia, for example, there are laws and administrative policies which included regulations ensuring accountability for action taken and decisions made by public officials in the performance of their duties; these provisions also included measures to prevent those public officials take advantage of their office (Constitution, V.1 Art. 13; Law 1994 from 1994).

remain close to the owners. However, increasingly, the business dynamics and challenges of globalisation have become more permeable and managers are giving greater consideration to the adoption of governance standards. In this regard, interviewee C2 mentioned:

> "There is the conviction that receptivity resembles the sky, because everyone wants to get there, but they are not there yet".

Interviewee C2 also suggested that the main challenge is to decide in the first place to support the adoption, perform a diagnosis, and then design a timetable for implementation.

One difficulty is the assessment of the corporate governance implementation process. When, for example, information about corporate governance developments is needed, in particular for specialised meetings and corporate governance round tables, consultants are hired to write documents. A systematic evaluation is replaced by a consultant's opinion. Thus, there has not been any attempt to identify the practices needed, the practices that have been implemented, or the problems that have arisen in the implementation. This may be why Interviewee C1 suggests, as a viable option, the work that is currently being done in Colombia by one of CAF's counterparts:

> "Confecámaras has taken as its own the process of training consultants and companies working with the ones that are interested in disclosing what they have learned and their experiences as a business. Thanks to this it has been possible to complete an academic activity with a panel where the speakers are entrepreneurs talking about how the implementation has worked and what happened because they did not incorporate good practices in time. Someone described the cases of family businesses that have had serious family conflicts which have had an impact on the squandering of their companies' funds. This is an indication that there is progress, but a lack of a systematic way of recording the experiences in most cases. It would be good to have a scheme incorporating practices. Missing is an organised way of systematising cases – 'knowledge management', as it is called. This would help not only to record experiences, but to use these many experiences as written and documented, for example, in business schools in Colombia".

Surveys such as the ones by CAF (2006), Salvador (2007), Confecámaras and the Colombian Superintendence of Companies (2008) have been carried out evaluating data from companies and their experiences of implementing good practices. Indeed, a questionnaire jointly administered by the Superintendence of Companies and Confecámaras en Colombia, included questions on corporate governance practices and social responsibility. The study raised questions on whether social responsibility or corporate governance was foremost in practitioner minds. This is an issue worthy of consideration, as well as an assessment of the organisations that have been involved as sponsors in corporate governance in the region, such as CAF, the Inter-American Development Bank (BID), the World Bank, the OECD, and the Centre for International Private Enterprise (CIPE) as, these assessments have not gone far enough to determine whether or not practices have been implemented successfully. The Superintendence of Companies in Colombia and Confecámaras surveys do not provide much empirical information and only give general descriptions of some of the practices companies have adopted; an assessment of the lessons learned to identify how some practices have added value in the management component of companies would be valuable.

Generally, corporate governance in organisations is related to management views, so business people need to see that the incorporation of these practices will add value; otherwise they will not implement them. In this regard, interviewee B4 notes:

> "When talking to a manager about corporate governance it also means talking about risk analysis, or the construction of an economic environment in which they can develop their business in a positive way. But with the discourse of corporate governance alone, usually, it has been more difficult to convince them".

The above statement stresses the importance of addressing the need for empirical research in the implementation of the principles of corporate governance in the Andean region and the difficulties and benefits that this implementation represents. This thesis attempts to address this issue.

According to some of the interviewees, there are people who are genuinely interested in the implementation of corporate governance standards in organisations, including investors, securities issuers and companies that want to list their shares in a stock marke. Further, the interviewees argue that corporate governance is not only for listed companies; rather, it may be used as a tool to create greater value and increase the value of shares to raise a company's market value. Many now feel that corporate governance affects everyone. This is the view from a very influential organisation, CIPE which has been financing corporate governance projects through out the region:

> "Corporate governance is applicable beyond listed companies – it is relevant for small and medium-size businesses, family firms, state-owned companies, and others" (CIPE, 2008, Booklet, p 1).

This demonstrates that corporate governance is not only for listed companies. According to this view Interviewee E15 mentioned that:

> "We believe that investors in one way or another are demanding compliance with corporate governance practices and companies must meet the issue; we're on that path and we continue to have investors who rely on us".

Equally interviewee E11 argued that:

> "The implementation of these practices is part of a natural process that must continue; we want our business to be included in a global movement that promotes transparency, credibility and values in corporations to their shareholders, to potential investors who are increasingly institutional investors and the market in general".

The implementation of corporate governance may be taken as a way to show the desire to be accountable to company stakeholders to demonstrate the legitimacy of organisation activities. Some, such as Alfredo Ibargüen[46] has highlighted the importance of determining the sort of corporate governance standards needed in a country and how those standards should be implemented by a company. Additionally it is important to consider why individuals want to implement the standards in their organisations. As stated by some of the Interviewees there are many reasons why companies in the region decide to adopt corporate governance principles.

Some of the interviewees point out that it is generally accepted that corporate governance should provide the necessary mechanisms to balance each of management's organs of control and supervision to ensure that decisions taken are conducted in accordance with the best interests of the company and its stakeholders. Interviewees B1, B2, B4, C1, and C4 suggested that, although the decisions made by a company affect all the stakeholders, only a limited number have an influence on companies' decision-making processes. These stakeholders, such as controlling shareholders, large institutional investors and executive directors, have a greater influence on company decision-making and can protect their own interests without having sufficient regard for the interest of all other

[46] Alfredo Ibargüen, is a consultant for the Spanish organisation IAAG, which has been working with CAF in the development, implementation and training on corporate governance issues in the Andean Region.

stakeholders, or the collective interests of the company. For example interviewee B2 mentioned:

> "More Stakeholders do not have the power to exert influence in an organisation decision-making process, and I not sure whether that many are interested on having that power"

Interviewee C2 explained how the Superintendence of Finance, a regulator in Colombia who was in charge of the design of '*Código País*' the country's corporate governance code, decided that the focus of corporate governance applied in Colombia would be based on the different types of relationships between individuals in an organisation. One consideration was that the relationship between shareholders and managers, or the agency problem, is not important in Colombian firms as they generally have a high degree of concentration of ownership in a few family shareholders. According to the Colombian Superintendence of Finance, the relationship between majority and minority shareholders is more important as the treatment given to minority shareholders as providers of capital may have less influence on company decision-making than large family shareholders. This is the main problem, as in many companies ownership is concentrated in a few shareholders who control the company, which creates conflict when minority shareholders feel they can not exercise effective control in the organisation.

Those interviewees who believe corporate governance should be about more than the agency problem suggest that a stakeholder approach can assist managers by promoting an analysis of how the company fits into its larger environment. Equally, a stakeholder focus may help to clarify how operating procedures affect stakeholders within the company such as employees, managers and owners or shareholders; and immediately beyond the company such as customers, suppliers, and creditors. It was suggested that taking stakeholders into account is very important, both because of their responsibilities to the organisations and for the benefits they expect from companies. For example, Interviewee D1 mentioned that:

> "A couple of ways to make this program is to get companies that currently have good governance practices to begin to link suppliers and customers, showing them the benefits of corporate governance and start asking them to adopt the principles of good governance".

Equally, Interviewees B2, D1, and D2 noted that the corporate governance framework should recognise the rights of stakeholders established by law or through mutual agreements, encouraging the cooperation between companies and their stakeholders in creating wealth, jobs, and the sustainable and financially sound companies. In addition, there is the need for mechanisms to ensure that the individual and collective interests of each stakeholder are served and protected. No stakeholder should be allowed to expropriate the interest of other stakeholders, and no single stakeholder should enjoy a monopoly over the decision making process of a company. For some participants this mechanism is corporate governance. This may be why interviewee B1 defines corporate governance as:

> "The mechanism used to conduct the affairs of a corporate body in order to serve and protect the individual and collective interests of all its stakeholders".

Besides, some of the individuals involved in this research believe that corporate governance standards, that promote the principles of integrity, transparency, and accountability, will protect and enhance a company. It is assumed that the good business practices, such as transparency in corporate financial reporting, and high levels of corporate governance are essential components of company's success. As pointed out by Juan Carlos Herrera[47] **:**

> "Being accountable generates value to the company not only economic value but also social and environmental".

A broad corporate governance approach is also recommended by some in Ecuador. This can be taken as an indication that some Ecuadorian participants share a broad stakeholder perspective. It has been suggested that practices need to go beyond the regulations issued by the stock exchange, the superintendent of companies and national banks, and rather look to the interests of society in businesses and the generation of economic development, and capturing public resources for the benefit of all. For example, according to Francisco Ribadeneira[48], given that the corporate structure is where listed companies are outweighed by families or groups of people who have come together to perform a particular business activity, investing their own capital or borrowing from the financial system, but without offering in the capital market participation to shareholders or investors other than those that form the founding group corporate governance should not

[47] Why Corporate Governance & CSR Workshop – Superintendence of Companies, Bogotá, 17-09-2008
[48] Francisco Ribadeneira S. is a Board member at the Ecuadorian Superintendence of Companies, "*Analysis of the Code of Good Corporate Governance of the Andean Development Corporation against Ecuadorian law*", Successful Corporate Governance Experiences in the Andean Region – CIPE, Confecámaras, AVE, and BVQ, 2007 Booklet (p 94).

be about the relationship between owners and managers but it should involve a broad group of stakeholders.

According to interviewee C4, in Venezuela corporate governance has been promoted as part of a social responsibility agenda, as it is believed this is a good way to focus companies' commitment to their stakeholders. Organisations such as AVE (Venezuelan Association of Executives) and CONAPRI (National Commission for the Promotion of Investment) with the support of CAF have been promoting an initiative called '*Transparency Revolution*' also known as '*Responsible Competitiveness*' which aims to promote good corporate governance practices.

In Peru, according to PROCAPITALES, corporate governance originates with the idea of the modern company, which was initially, concerned with the delegation of power over decision-making to managers others than the owners of companies. However, now good corporate governance practices have become recognised as a source of business value and PROCAPITALES with the help of CAF promotes good practices through its competition referred to earlier.

In Bolivia according to the National Institute of Statistics – (INE) micro-enterprises[49] account for 92% of the total of companies in the country, small enterprises 7%, and with medium-sized and large enterprises comprising just 1%. Similarly in other counties in the region, the high number of very small businesses in the country influences the approach to corporate governance (see Table7.14).

Referring to the size of companies in Bolivia, Interviewee B4 mentioned that the Superintendence of Companies, which is the corporate governance regulator in that country has decided to centre corporate governance on rules, traditions, behaviour patterns and characteristics of the national economy and the country's legal system and not just on an imported western model or imitating what has been done elsewhere. Table 7.14 shows the proportion of companies in each Andean country according to the size of

[49] A micro-enterprise is defined in Bolivia as an economic and productive unit where the owner is involved in the production process. Its activities imply coordinating a wide range of functions, such as money handling, market dealing, and management for an economically productive activity. According to the Bolivian National Chambers of Commerce classification of companies by number of employees a micro has less than 10 employees, a small between 11 and 20, a medium between 21 and 120, and a large more than 120 employees.

the company and table 7.15 introduces the classification of companies in the Andean region according to the number of employees.

Table 7.14 Number of companies in the Andean region by country according to the size of the company

Type	Bolivia *(1)*	Colombia *(2)*	Ecuador *(3)*	Peru *(4)*	Venezuela *(5)*
Micro	92%	96%	52.3%	95.8%	****
Small	7%	3%	38.8%	2.1%	64.4%
Medium	1%	**	5.9%	2.1%	25.7%
Large	*	1%	3.0%	***	9.9%
TOTAL	100%	100%	100%	100%	100%

Note: this table shows the proportion of companies by size in each Andean country
(1) Information taken from the National Institute of Statistics (INE), 2008
(2) Source: Colombian Association of Small Entrepreneurs (ACOPI), 2008
(3) Source: National Federation of Chambers of Small Manufacturers (FENADI), 2007
(4) Source: National Institute of Statistics and Information (INEI), 2008
(5) Source: National Institute of Statistics (INE), 2008
** Medium and large percentages are added to 1%. ** A figure for Small and Medium (3%). *** Medium and large percentages are added to 2.1%. ****There is not separate information for Microenterprises*

Table 7.15 Classification of companies in the Andean region according to the number of employees

Type	Bolivia *(1)*	Colombia *(2)*	Ecuador *(3)*	Peru *(4)*	Venezuela *(5)*
Micro	< 10	≤ 10	≤ 10	< 10	1 – 4
Small	11 – 20	11 – 50	11 – 50	10 – 20	5 – 9
Medium	21 – 120	51 – 200	51 – 150	21 – 100	10 – 99
Large	> 120	> 200	> 150	> 100	> 100

Note: *this table shows the classification of companies in the Andean Region by size according to the number of employees. In*
(1) Classification according to the Bolivian National Chambers of Commerce
(2) In Colombia the classification is according to Law 905 of 2005
(3) Classification done by the National Federation of Chambers of Small Manufacturers (FENADI)
(4) In Peru Classification according to Decree 1086 by Ministry of Industry 28-06-2008
(5) Decrees with scope, value and force of law for the promotion and development of a microfinance system – Official Gazette Mach 2001

This view of corporate governance shows that, in Latin America, a problem may not exist between managers and owners, but between majority owners and minority shareholders. Corporate governance must take into account the fact that the region has a different legal framework from 'Common Law', as four of the countries (except Ecuador) have a legal framework consistent with civil law. The broad legal framework of a country highlights the degree to which stakeholders' rights are protected and judicial decisions are enforced. Some of the interviewees suggest that corporate governance should go beyond legislation to give it greater meaning and try to be more transparent by going beyond what is in the law. For example, Interviewee E12 pointed out:

> "We understand that our responsibility to stakeholders should go far beyond what is in the rules and behave in an exemplary manner for society".

A view that takes into account a wider responsibility toward stakeholders is also acknowledged by special interest groups such as trade unions, consumer associations, political party associations and business roundtables, among others. The idea is that the principles of corporate governance apply to both public companies, and to small businesses. In this respect, opinions vary widely and some small businesses misunderstand what corporate governance means. For example, a taxi driver in Colombia (Mauricio) with a business consisting of just five taxis employing four drivers expressed his desire to implement corporate governance to the researcher.

Nevertheless, in the Andean region many issues still remain to be addressed in this regard, as it is a long process and there is a need for the "awakening of companies' consciousness" (Interviewee B1). For this reason there are different corporate governance arrangements for each type of company and no rules should be applied as if they are straitjackets. Corporate governance needs to be flexible and able to change when needed and match the peculiarities of each organisation. It is also difficult to judge whether an organisation has fully adopted corporate governance standards as there is always something new or something changing and therefore the rules must be able to adapt to all these features, as interviewee C1 points out:

> "Corporate governance is not implemented from one day to another. It should be studied, understood, decisions tested, and changed, and if this fails, then make adjustments. It may be pulled off with an internal consultant or external legal adviser, or a Board member assumes the responsibility to make changes, etc. there is not a single mechanism for advancing the issue".

A decade ago it was unknown as to what the benefits of the implementation of corporate governance would bring, and there was a conception that it would cost too much. As this negative view started to be overcome and people perceived that the value of the implementation would enhance their companies, there has been a better attitude towards the process. However, there is some agreement that this is something that should not be rushed, as people need to adapt to new conditions, as Interviewee C3 explains:

> "The adoption of corporate principles is a process that takes time. This fact makes it even more possible that companies enter in the process honestly and with the aim to make a genuine implementation".

The idea among corporate governance promoters is that there is a need to present good examples to companies to convince them about the benefits of adopting good practices, as Interviewee C1 says:

> "Documenting such cases and showing the benefits and profits that are generated from these processes is how it is possible to make companies and the wider community aware of the importance of these processes. It is also important that the processes are well supported and well-argued. This will make it more difficult each time those issues of a political nature or exogenous interventions exert pressure on companies against adoption".

Indeed, 90.8% of the respondents to the researcher's survey agree to some extent that the implementation of CAF's Corporate Governance Guidelines bring benefits to companies and to stakeholders (Table 7.16).

Table 7.16 CAF's Corporate Governance Guidelines are beneficial

Economic activity	CAF's CG Guidelines are beneficial					Total
	Strongly agree	Some agreement	Agree	Some disagreement	Strongly disagree	
Entrepreneur	40.0%	35.0%	5.0%	10.0%	10.0%	100.0%
Adviser	52.5%	32.5%	10.0%	5.0%		100.0%
Student	50.0%	33.3%	16.7%			100.0%
Other	40.0%	40.0%	10.0%	10.0%		100.0%
Total	47.4%	34.2%	9.2%	6.6%	2.6%	100.0%

Note: This Table shows the extend to which the respondents agreed that CAF's Corporate Governance Guidelines are beneficial

An additional motivation for listed companies to adopt corporate governance standards is given by the market; it is expected that 'good' governed companies would have a higher market valuation. However, this has not been conclusively proven.

In Ecuador, as argued by Ribadeneira[50], a country with a weak administration, good corporate governance is believed to be critical to increase business access to sources of funding, especially in the stock market. As Patricio Peña, Quito Stock Exchange President explains:

[50] Francisco Ribadeneira S. is a Board member at the Ecuadorian Superintendence of Companies (Revista Derecho Económico, No.2, 2010).

> "The aim is that Ecuadorian companies compete on equal conditions with regional and global organisations, creating a culture of good corporate governance in the business environment, no matter whether this is industrial, commercial, agricultural, service, or any other. This is the key to optimise management and obtain the best results for shareholders, directors and employees which would undoubtedly have a positive impact for customers, suppliers, society, and of course, Ecuador".

This concurs with the idea that a wider variety of goals are suggested for companies. These include the traditional objective of profit maximisation. However, other goals include numbers employed, measures of employment welfare, manager satisfaction, products and services quality, environmental protection, and many others. A major reason for taking a stakeholder approach in setting company objectives is the recognition that organisations are affected by the environment in which they operate. Organisations come into regular contact with customers, suppliers, government agencies, families of employees, and special interest groups. Decisions made by a company are likely to affect one or more of these stakeholders groups. Companies are accountable to them and need to legitimate their activities.

The findings discussed in this section reinforce the view that there are three main approaches to corporate governance through the region; a narrow view, where all concerns are only about the relationship between owners/shareholders and managers; a broader view, proposing the engagement of a wider group of stakeholders; and a more recent approach which involves a CSR focus, which asks for social responsible organisations within the corporate governance framework. These findings help answer the research questions.

7.4.2 Voluntary versus mandatory corporate governance principles

There has been an increase in the number of groups dedicated to improving the levels of corporate governance in the region and there is now a more active role played by institutions in this area. However, adoption continues to be considered as a voluntary initiative and the main concern over introducing methods to increase levels of compliance with the principles enforced by law is that it may result in large increases in just box ticking exercises. This is the view of Salvador (2007), when she presented the results of the Survey about Demand and Supply of Corporate Governance practices in Ecuador[51]; she argues that:

> "…in respect of the fact that these practices are mandatory, there is a law requiring companies to adopt the Code of Corporate Governance 63% of the survey respondents did not share the idea of additional regulation which indicates that some would apply corporate governance principles as a conviction, or because it is considered important and not because it is an obligation".

Individuals in the Andean region share different views about a mandatory or a voluntary approach. Interviewees A1, B3, C2 and C4 explain that there are rules that say what should be done, and if a company believes that it is not affected by a specific standard, for example management decides that due to the size of the company it should not subscribe to those rules, then they should explain why they are not applying them. It is for the potential investors or stakeholders to decide whether explanations are satisfactory. It is expected that companies should be transparent in explaining the reasons why certain principles do not apply to them. Interviewee C2 clarified:

> "Whether this should be made mandatory or voluntary is going to depend on the laws of the countries or the companies' statutes; in any case the degree of binding is not going to stop people showing something that is not the truth. And it could end up having many companies with corporate governance codes which are only in appearance and will not be very useful".

This is something which has been discussed intensively around the negotiation table, according to Interviewee B3: "To what extent people might be forced to comply". There are many rules in the commercial codes of the five countries that make the implementation of corporate governance principles very difficult as expressed by interviewee C4 when he states that:

> "What happens is that codes of commerce in any way represent a direction of good governance for companies. Usually when one starts to talk to organisations of good corporate governance, and it comes to the issue of rules of trade, it is not so unknown that on the issue of corporate governance the commercial code proposes many things that go in that direction".

According to Alfredo Ibargüen[52], at an event attended by the researcher, implementing corporate governance practices must begin with a discussion of the internal processes in

[51] The survey was carried out by Maria Soledad Salvador a BVQ's (Quito Stock Exchange) official.
[52] Alfredo Ibargüen, is a consultant for the Spanish organisation IAAG, which has been working with CAF in the development, implementation and training on corporate governance issues in the Andean Region.

which the implications of adopting certain practices should be assessed. This process can be divided into two categories: one 'meaning and effective' the other cosmetic in nature. The former corresponds to the conviction of the managers of the importance of complying with the principles. The second responds to "fashion", or how little importance is given to the process. In a 'meaning and effective' process the decision to adopt the principles is taken by the owners, the implementation is done via statutes, regulations, and shareholders' agreements. This inclusion of the principles in the documents of the company then requires reporting compliance with the principles adopted. Further, there should be a report disclosing the practices that were not adopted or have not been temporarily complied with. On the other hand, in a cosmetic process the decision to implement the practices might not have been taken by someone who does not own the company nor has sufficient authority to make that decision to implement the principles. Moreover the implementation becomes ambiguous and corporate documents do not oblige it, but only comply with the minimum legal requirements, nor is there a clear and objective process of informing stakeholders about the measures that were not met or the reasons for this omission. Again, much effort is put on organisations to engage with all their stakeholders which can be taken as an indication that there is no a broad stakeholder perception in the region answering the second research question. However, there are signs that organisations are only willing to implement corporate governance in order to show their legitimacy answering the third research question.

The evidence from this case study shows that there is a wide agreement that the implementation of corporate governance should be voluntary. However, the effect of improving the regulatory framework should result in more investment and a lower cost of financing for companies, but strict regulations cannot entirely replace a management's real commitment to the essence of corporate governance which is believed to be important for the success of an organisation. As Interviewee C4 points out:

> "There should be nothing that obliges [a company] to implement the guidelines of corporate governance. Certainly what we support is that companies comply with the principles of corporate governance on a voluntary basis. So it is fair to say that a corporate governance culture is more a matter of believing in such a way of doing things, it implies that organisations participate voluntarily in these subjects, in other words whether they have to show good corporate governance is to do so voluntarily".

In Colombia, for example, the Country Code establishes minimum standards that are above the mandatory rules established by law and these standards were set by stakeholders. As explained by Cesar Prado V., Colombia's Superintendence of Finance's Chief[53] at an event attended by the researcher:

> "This code is not the product of a unilateral imposition of authority; this code is the product of a consultation that took about 2 years. Discussion meetings were held to which were invited all stakeholders and they were accompanied by the Superintendent. In particular, those aspects which they considered highly relevant were identified, such as the election of board members, board meetings, the proportion of independent board members needed, disclosure of information, and so on".

The issue is very important because what can be seen is that sometimes a country's law does not promote corporate governance, but to the contrary prevents or hinders its implementation. Besides, the recommendation is to promote the participation of all shareholders in company affairs; this may be a way to overcome the narrow stakeholder perception (the first research question). Therefore, to promote these issues, a thorough review of the law is needed because there may be certain rules which in some cases go against good practices, as explained by Interviewee B2:

> "In Colombia, for example, it is not a written rule, not in the commercial code, but it is a case law, a circular of the Superintendence of Companies, that says that no member of the board of directors can directly request information from an officer of the company[54]".

Additionally, Interviewees B1, B4 and C1 argue that the voluntary adoption of best practice is also associated with quality standards. Interviewee B1 mentioned how a few years ago these ISO[55] quality norms were developed, which have never been compulsory. The implementation of the norms started as something voluntary; today a company which has an ISO certification has an advantage over any other company in the same sector which is not certified.

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[53] "Corporate Governance Forum"; sponsored by Javeriana University, Superintendence of Finance, Colombian Stock Exchange, and Colombia Capital, Bogotá, 3 September, 2008.

[54] A Directive issued by the superintendence of companies: Judicial Concept (Concepto Juridico) 220-18869 (17, November 2000) expresses the arguments related to the obligation that assist managers to respond positively to requests for information submitted by an individual member of the Board of Directors.

[55] The International Organisation for Standardisation, widely known as ISO is an international-standard-setting body composed of representatives from various national standards organisations. The organisation promulgates worldwide proprietary industrial and commercial standards. While ISO defines itself as a non-governmental organisation, its ability to set standards that often become law, either through treaties or national standards, makes it more powerful than most non-governmental organisations. In practice, ISO acts as a consortium with strong links to governments.

7.5 Corporate governance in SMEs and family-owned businesses

CAF has been providing corporate governance information to companies in the Andean Region interested in the adoption of corporate governance principles in their organisations. CAF has also developed additional guidelines to assist companies such as family-owned businesses in the adoption of corporate governance principles, as pointed out by interviewee B1:

> "What CAF did was a conceptual contribution to closed capital businesses[56], and issued a new document which is the Code of Good Corporate Governance for Closed Capital Businesses – This document is available at CAF's website. According to CAF estimates Closed Capital Businesses are between 93% and 94% of all businesses in Colombia, these are SMEs, family businesses, which may be in first, second or third generation".

The CAF Corporate governance Code for Closed Capital Businesses was issued to be the basis for small and family-owned companies to implement codes specially tailored to their needs. The code is based on the Guidelines for the Andean Code of Corporate Governance (LACGC), but it is supplemented in those areas where there are concerns related to the nature of closed capital companies.

According to Interviewee B4 closed capital companies constitute the vast majority of companies in the Andean region and make the greatest contribution to GDP and employment. They are considered as 'learning institutions' for employers and creators of innovation and economic growth in the region; regional close equity firms are characterised, in most cases, as being family-owned with little separation between ownership and management.

The emphasis is different in the case of family businesses, where one of the main problems is mixing family issues with the running of the business. Those organisations supporting the implementation of good practices in the five countries are helping families prepare family protocols to regulate issues affecting family relationships with their companies; for many this is a form of corporate governance. Thus the principles are as valid for SMEs as they are for listed companies, although different approaches are taken. The aim is to make SMEs aware that they are able to engage with all their stakeholders.

[56] This tool is targeted at small, medium and large companies where there are restrictions on the free transfer of shares or participation in shares.

According to Eugenio Marulanda[57] - Confecámaras President at an event attended by the researcher:

> "The running of family businesses has added features such as the relationship of family - business - property. The idea is that managers should have the ability to implement policies and use the necessary tools to organise and strengthen family businesses, make them sustainable over time… Corporate governance grants tools to management for risk prevention, has a positive impact on board members, improves leadership, results in increased transparency, and optimises the process of decision-making".

The implementation of corporate governance principles is considered very important for the development of the Andean region as mentioned by Ramiro Pizarro[58]. While the concept of corporate governance has been known for some time in the region, there are many difficulties still being encountered in the implementation process. At the very beginning there was disagreement and opposition to CAF's role, as mentioned by interviewee B2:

> "CAF, at first, was not very interested in the project until its executives began to see the benefits of 'this', the CEO did not understand the issue therefore he was not interested in it; to the contrary, many companies were very interested in the issue, this made it a good topic to work on, however it was particularly difficult".

There was also opposition from other sectors as pointed out by interviewee B1:

> "There is a normal resistance from politicians towards the implementation of corporate governance as it is always to something new. To overcome this is needed a continuous effort from public and private organisations. This needs to be broken little by little".

However, the process has moved forward, as affirmed by Confecámaras president:

> "Slowly, good corporate governance has been assimilated by various actors in the economy as a strategy to enhance corporate performance, proving, along with the progress, the impact generated in the productivity and competitiveness of the countries in the region" [59].

7.6 State-Owned Enterprises (SOEs) versus non SOEs

Many of the participants in this research agree that having good governance is not just about having a code but then abiding by it. This is especially important for state-owned

[57] Eugenio Marulanda, speech at the 'La Republica' Forum, "Making Management more Professional and Effective", Bogotá, 07 October 2008.
[58] Ramiro Pizarro, Latin America Expert, International Labour Organisation (ILO), speech at the DNP, LEED and CAF Conference, Bogotá, 16, 09, 2008.
[59] Eugenio Marulanda, 2007, Preface in *Experiencias Exitosas de Gobierno Corporativo en la Región Andina (Successful Corporate Governance Experience in the Andean Region),* Confecámaras booklet (p 9).

companies where the principles of corporate governance are also being implemented. As pointed out by Interviewee B1:

> "To have good governance practices means shielding these [state-owned] companies from political interference. Caution is needed because just having a code does not guarantee everything. Corporate governance fails or may fail because of corrupt mentality, which often is very creative. Therefore, it is very difficult to foresee adverse contingencies that may occur in a company".

There is some agreement among the participants that corrupt politicians can do many things against the interests of state-owned organisations even for a watched over company[60]; this is why it is important to be very careful. As Interviewee B1 states:

> "Today politicians are more caring – because they know it is costly for all the heritage of the city or country, and then there may be a benefit in reputation, for companies that do good things in practice and demonstrate that through well-being".

The difference between the corporate governance of state-owned companies and family-owned businesses are that, the latter have less strict controls than the former. As noted by interviewee B2:

> "Many companies want to reform the way that they are managed. Companies need to attract capital, especially from abroad, and importing or exporting partners from abroad are beginning to ask: do you have corporate governance? Then these firms are more likely to implement good practice, and this is happening now to many companies".

Another important aspect to be taken into account is the case of a particular sector of Colombian state-owned companies which are now able to implement corporate governance due to changes in the market and the way they trade their products; alcoholic drinks. In the past these companies enjoyed a monopoly for trading their products within their geographic regions. Today, government rules allow companies to trade their products freely across the country, therefore, to face competition in an efficient way, these companies needed to improve the way they managed and controlled their businesses, as pointed out by interviewee B4:

> "Of course, there should be a legal framework; we have the civil code, commercial code, etc. But it is assumed that corporate governance goes beyond what is the law itself, otherwise it would have no meaning. Corporate governance is to be more transparent by going beyond what is in the law, if this

[60] Throughout Latin America state-owned companies in particular are under the supervision for special bodies normally called superintendence, such as Superintendence of Public Services, Superintendence of Health, Superintendence of Public Expending, and so on.

> is true or not this should be acknowledged by the monitoring done by special interest groups. Additionally, minority shareholders should demand that their rights are met. Financial providers should ensure that the board of directors are doing their job, and in principle, it should be the market which punishes companies if these things are not met".

Additionally is family businesses, according to Interviewees B1 and B3, it is the owner who makes most decisions. Therefore, is the owner who needs to be convinced about the benefits for their businesses of implementing corporate governance principles and in these cases it is not possible to do very much when these individuals decide not to adopt the principles. However, as companies go from one generation to the other, the new owner (the successor) changes, and for this reason there are a good number of examples of family businesses that are very well managed and where efficient governance processes are running successfully today. Some such cases are the companies that took part in CAF's Pilot Study. An example is given by Interviewee as D3 he mentioned:

> "Before, we just made decisions. It did not matter whether those decisions were right or wrong. Now the implementation of corporate governance principles has given us flexibility in managing the company. This is an advantage; I think it has given us the ability to make good decisions".

Today different organisations are promoting corporate governance as a means to improve or as a tool that might help or change the way family-owned businesses are managed. An important part of the process is focused especially on the separation of companies from families' wealth.

Regardless of the country in which the participants are located it can be said that there appear three approaches to corporate governance. First are those who think that it is only about owners and managers or majority and minority shareholders. Therefore, it related to all those who share a narrow stakeholder perspective and helps to answer to the first research question. Second there are differences on whether accountability is owed just to shareholders or to every stakeholder answering the first and second research questions. Third there is a widespread perception that the implementation of good practices makes an organisation and its managers more trustworthy to society and helps to answer to the third research question with a need to show a company's legitimacy. However, measuring such legitimacy is a more difficult matter. According to some participants, legitimacy is assumed to be influenced by disclosures of information and not simply by changes in corporate actions.

7.7 Overlap of CSR and corporate governance

The perspective of corporate governance emerged from the case study: that CSR connects to governance either determining the limits and accountabilities of an organisation in relation to a broad universe of stakeholders and its social responsibilities and opportunities, as an operational issue. However, some do not have clear idea about the relationship between the two issues; as Interviewee C1 explained:

> "Management in general have much confusion, such as what are their social responsibility and the relationship to corporate governance. There are some who believe that corporate governance is less important and focus on social responsibility. Others reject social responsibility and they focus on corporate governance".

There are, thus, some misunderstandings in the business community with regard to the issue of corporate governance and its relationship with social responsibility. The confusion is not just among businessmen but also among many of those who are considered experts in corporate governance and social responsibility. According to Enrique Oliveros, PROCAPITALES' Chairman today's businesses operate in an environment of intense media, regulatory and public scrutiny. At the same time, increasing public and stakeholder concerns about the social and environmental impact of business practices is pushing companies to come to terms with a much broader set of interests and expectations. This has resulted in approaches to corporate governance, corporate social responsibility and corporate sustainability that are increasingly being integrated into the business strategy of successful companies. As a result, the field of responsible business strategy and practice is becoming a dynamic and challenging issue that managers are facing today. Interviewee C1 links the three subjects together when he states:

> "Corporate governance sets the legal framework to protect a company's stakeholders, the relative emphasis being dependent on national approaches. Corporate Social Responsibility focuses on extending the legal requirements to promoting ethics, and philanthropic and social reporting to satisfy stakeholders concerns. Corporate sustainability concentrates on long-term economic and social stakeholder expectations".

7.8 Corporate governance structures

The case study also examined particular corporate governance issues such as the board of directors, its size and structure, the need for independent directors, the recommended remuneration for board members, and the need for board committees. Additionally, issues related to internal control and risk management are addressed, all within the parameter set by the provisions of the Guidelines for the Andean Corporate Governance Code (LCAGC). Evidence from this sections support the answers for the three research questions, which this study set to answer.

7.8.1 Board of directors[61] and board size

According to Interviewee E1, political and regulatory developments are clearly significant at the moment, and affect the nature and scope of the board of directors and non-executive directors' roles.

Some of the CAF case interviewees suggested that improved corporate governance and accountability means: to have an active board with a well proportioned executive versus non-executive members; representatives from all groups of stakeholders; the separation of the role of CEO and chairperson; the creation of board committees; and changing audit firms regularly. Companies stand to gain by adopting a system that strengthens stakeholders trust through transparency, accountability and fairness. However, with the high number of family-owned businesses, the reality in the Andean countries is that many of these businesses do not have a board of directors. Moreover, while Andean institutional investors have greater relevance than a few years ago, their portfolios are concentrated in government securities so there is little or minimal involvement of institutional investors with boards.

Information provided in annual reports of companies that took part in CAF's pilot study indicates that companies that have been nationalised tend to reduce the size of their board of directors. It is different at privatised organisations where boards of directors have been strengthen with the appointment of a higher number of independent directors.

The presence of a board can assist in better decision making by businesses, particularly those owned by families. For this reason, the Corporate Governance Guidelines (Provision No. 19 in Exhibit 7.1) establishes the need for a Board, defining its size and

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[61] Andean Regional names: Directory (Bolivia, Venezuela and also used in LCAGC); Board of Directors (Colombia, and Peru); Governing Body, Administrative Council (Ecuador).

establishing some of its functions which cannot be delegated (Provision No. 20 Exhibit 7.1). However, the existence of a board by itself does not guarantee that better decisions are taken; as Cadbury (2002) states:

> "The effectiveness of a board depends on its composition, the balance between its members and its chairman capabilities".

Exhibit 7.1

LCAGC, Extract of Provision No 19*: Companies whatever their type of association must have a directory [Board of Directors] with a number of members sufficient for the proper discharge of their duties…* ***LCSGC, Provision No. 20****: Company's Statutes shall determine the functions of monitoring, evaluation and strategy of the board, which shall not be handed over…*

Note: This exhibit shows two provisions from Chapter V: The Board of the Guidelines for the Andean Code of Corporate Governance (LCAGC) as translated by the author.

The election of board members tends to dominate corporate governance issues in the region (Interviewee B1). However, the role of non-executive directors, the audit function and board committees are currently receiving considerably more attention, given the support for the adoption of corporate governance standards after corporate failures in the US and Europe. Interviewee B1 provides a broad explanation of a board structure:

> "The electoral system is something that has been questioned a lot by investors, who see it as a waste of time, the biggest problem being the election of independent directors, where there is a special table to calculate the ratio of elected members after votes have been cast in election processes. This is controversial because it demonstrates that it is almost impossible for some shareholders to participate on the board. Since this is something aimed to ensure the participation of minority shareholders, or that there are at least independent board members to act in the interests of all shareholders equally; although it does not guarantee that it will work, just because they are independent, or external or with no links with the company and does not mean that it is not controlled by the majority shareholders. The selection procedures for the appointment of independent directors should be always fair and must consider all the relevant parties. For family owned businesses it is necessary to engage the interest and participation of family members".

According to interviewee B2, issues such as the legislation of a country have a substantial influence in shaping the board of directors. There are different voting mechanisms[62], electoral quotient, and appointment of members by minority shareholders, closed lists,

[62] According to Colombian law those who may not be on the boards either form a majority among people connected by marriage or kinship within the third degree of consanguinity or second of affinity, except in the recognised family-owned company. If a board is elected contrary to these provisions, it may not continue in office and is to convene immediately to the Assembly for new elections.

individual choice, and the combination of options to propose candidates to be directors. The board is the only body that has the resource to verify compliance with the requirements demanded of each director and in particular the expected requirements for independent outside directors. These requirements must be made clear in the statutes and regulations of the board. It is recommended that companies have a nomination and remuneration committee, although it is possible that such a committee is only present in large organisations; other companies may delegate this function to an independent external director.

In Colombia, the company Board should have a minimum of five, and maximum of nine members[63], however according to interviewees C1 and C2 some companies may need 15 members, so this limit does not fit all circumstances. 'Codigo Pais' (The Country Code) also requires that Boards have an odd number of members to ensure effective decision-making. In addition, boards of listed companies tend to include shareholders or their directly elected representatives; these boards do not often include independent directors that could contribute their experience and expertise to the board.

Interviewee B1 mentioned that in the case of family-owned business, the structure, role, and composition of the board of directors varies from one family business to another. These features are normally determined by the size and complexity of the business and generation of the owning family. Board membership is kept to members of the family and, in some cases, to trustworthy non-family managers. This is usually done with the aim to preserve family control over the direction of the company and most decisions are taken by family-member directors. At the start of a new company, boards are elected to comply with legal requirements alone, but as the business develops, it is expected that the board will take charge of the company's strategic plans and decision-making process. Interviewee A3 thought that the mere existence of a board of directors sends a clear message to staff and other stakeholders that the family is interested in ensuring the continuity of the business. However, the reality of the family-owned business shows that boards do not always know the best way to bring value to the company, as the Confecámaras' Presidents at an event attended by the researcher points out:

[63] Colombia: the "Principles and Framework for the development of a Code of Good Corporate Governance" of Confecámars states that have at least five (5) and not more than nine (9) Directors.

> "It is also important to note that depending on the function, size and needs of the business the board need not be the sole organ of the family business. The usual help is complemented by other bodies, such as: an advisory committee, a committee of financial affairs, and training and selection committee, whose mandate is to support referral and training of family members who choose to work in the company, respectively".

It is also important to consider state-owned enterprises' boards which, according to Interviewee A4, in most cases tend to be too large, lack business knowledge and independent judgement. They may include a majority of members from the state administration. Furthermore, they may not be entrusted with the full range of board responsibilities and can therefore be overruled by senior government officials and by governments themselves. In addition, in some cases their function may also be duplicated by specific state regulatory bodies.

According to some participants state-owned enterprises' boards, in principle, have the same responsibilities and liabilities under company law in the Andean region. However, in practice, board members may have a reduced liability, particularly those individuals nominated by the state. The responsibility of state-owned enterprises' boards, in most cases, is articulated in relevant legislation and regulations, the government's ownership policy and company statutes. Usually, all board members have a legal obligation to act in the best interests of the company and to treat all shareholders equitably and according to Interviewee C2 to encourage board responsibility, and that they should follow best practices as adhered to in the private sector and have a limited number of members. Analysing the above statement against the research questions; it may be possible to suggest that SOE boards are accountable to a small group of stakeholders. Recommendations about board size are explained by the Provision 23 of the Guidelines for the Andean Corporate governance Code (LCAGC), (Exhibit 7.2).

Exhibit 7.2

LCAGC, Provision 23: *Corresponds to the General Assembly decide the number of directors within the minimum and maximum limits set by the company statutes. A recommendation on the optimal size of the Board will depend on the size of the company, which a good number of cases that would justify a fixed number of five or seven members, but the Board should have normally not more than eleven members. For large companies this number can be increased up to fifteen. In any case it is desirable to have the appropriate number of members to form Audit committees, Remuneration and other committees deemed necessary.*

Note: This exhibit shows two provisions from Chapter V: The Board of the Guidelines for the Andean Code of Corporate Governance (LCAGC) as translated by the author.

In relation to the recommended size of the board of directors, some participants at an event attended by the researcher agree that it depends up on the size of the company. For example, Herrera[64] mentions that for a small company in its early development stage it does not make much sense to have a board because the company is at a stage where the decisions are taken by one or two people and the numbers affected in terms of employees, suppliers or customers is very small. However as organisations grow, there is a greater need for professionalism and they should then review their governing bodies. With the change of conditions, there is a need for a board and independent directors to provide knowledge that can serve the organisation, and for rules so that all shareholders are adequately represented. Experience indicates that smaller boards allow real strategic discussion and are less prone to become rubberstamping entities. Interviewee C1 also mentions that:

> "Boards are not professional by a certain degree, and a process is needed to make board structures more formal. There are currently no guidelines for independent directors. For example if an independent director is needed for a board, then the initial search is among friends. As a result some people hold too many appointments. Directors therefore end up not having enough time to study all the reports and assist their companies in strategic decision-making. When a person is a member of too many boards he might end up having not enough time to develop plans or assess the strategic direction of all the companies this person is working for. Board members should have their own 'staff' to prepare board meetings for them; someone explaining and pointing out important issues such as investment plans, financial matters, profiles of persons to be hired, and assess other board members".

The role of the board is to guide the company's policy, and to control management and liaise between the management and stakeholders. CAF's (2006) manual of corporate governance for companies with closed capital recommends compliance with the duties of the board, as well as the nature of team work for senior management on their decision-making processes, where the size and composition of the board are key processes for its operation. However, there is no agreement on an optimum board of directors' size. A large number of members represent a challenge in terms of using them effectively and/or having any kind of meaningful individual participation.

[64] Juan Carlos Herrera, independent consultant, speech at the "Why Corporate Governance & CSR Workshop" – Superintendence of Companies, Bogotá, 17-09-2008.

The size of the board varies a lot from one company to the other; among the companies that answered the BVQ's survey the smallest Board has just three members while the largest board has seventeen members. According to the results of the survey carried out by the Colombian Superintendence of Companies, 68.8% of those who answered the questionnaire said they had a board of three members; only 1.7% of the companies had a Board of Directors of seven or more members (See Table 7.17).

Table 7.17 Number of members on Boards of Directors in Colombia

Number of Members	%
3 Members and their deputies	68.8
4 Members and their deputies	7.3
5 Members and their deputies	17.4
6 Members and their deputies	3.4
7 Members and their deputies	1.3
More than seven members and their deputies	1.7

Note: this table shows results taken by the 2008 survey carried out in Colombia by the Superintendence of Companies.

Views vary from one country to the other, for example the Ecuadorian survey carried out by the Quito Stock Exchanges' (BVQ) shows that the preferred number of board members raises different opinions. Among the respondents there was a company that declared it had an even number of board members, a practice which could create problems in decision-making when there is a tie.

In addition, information taken from the financial statements for the year 2007 of the companies that took part in CAF's pilot study, show that six of the companies had a board consisting of seven members, two companies had five members on its board, and two other companies had a nine member board. Only one company had three members on its board, while another company had a board consisting of seventeen members. There was no information from three companies.

These results are not unlike those of a study conducted by CAF through the Spanish consulting firm IAAG[65] in 2006, which found that on average boards in the Andean region are made up of seven members with an average age of 50.7 years. The LCAGC recommend that board members have an average age between 55 and 65 years (LCAGC,

[65] Diagnosis of Corporate Governance Practices in the Andean Region, CAF, 2006

Provision 25). Table 7.18 shows the overall results from the different surveys used in this study, such as the BVQ study, the Colombian Superintendence of Companies survey, the annual reports of the companies that took part on CAF's pilot study, and the Andean measurement carried out by IAAG.

Table 7.18 Average number of members on Board of Directors in Andean Countries (percentages)

No of Directors	BVQ*(1)*	Super-Companies *(2)*	CAF's Pilot Companies *(3)*	IAAG *(4)*
3	63.5	68.8	8.3	11.6
4	-	7.3	-	-
5	19.2	17.4	16.7	9.5
6	-	3.4	-	-
7	9.6	1.3	50.0	64.7
Between 7 - 15	5.8	1.7	16.7	7.4
More than 15	1.9	-	8.3	6.8
Total	100	100	100	100
Sample size *(5)*	67	7.414	13	189

Note: this table shows a summary of the results of various surveys carried out in the Andean region which are used in this study
(1) Quito Stock Exchange; (2) Colombian Superintendence of Companies; (3) Information from annual reports from companies in CAF's Pilot Study; (4) Andean survey by IAAG, financed by CAF; (5) Sample size: number of companies that answered the survey

7.8.2 Independent non-executive Directors

CAF highlights the importance of having independent directors on company boards. In particular, there is a need for non-executive directors to provide meaningful and effective contribution to the governance of companies and investor protection as outlined in the Corporate Governance Guidelines. LCAGC, Provision 19 (Exhibit 7.3) suggests two categories of members, external and internal directors. Internal are those who have an employment contract with the company and external directors are subdivided into two subcategories: (i) external non-independent; and (ii) external independent, whose decisions are not subject to, or subordinate to, the interests of a controlling shareholder.

Exhibit 7.3

LCAGC, Extract of Provision 19: *The board of directors may consist of internal and external directors that may be independent or not independent. The appointment of directors should reflect the capital structure of the company. The board may be incorporated wholly by outside directors, except for closed Capital businesses, where it is preferable that independent directors will always be a large majority....*

Note: This shows a small part of a provision from Chapter V: The Board of the Guidelines for the Andean Code of Corporate Governance (LCAGC) as translated by the author.

Equally, the number of independent directors should be related to the size of the company and to the number of members on the board of directors. Interviewee C2 stressed that "a company should have not a thirty director board, just because is a large business"; and the same for the need of having a separate CEO and Chairman.

Some of the interviewees agree that the choice of independent directors has its flaws, because occasionally they are recommended by the president or the directors, as in so many cases boards end up choosing individuals linked by friendship or family, thus the independence of directors is questionable. To avoid this it is suggested that organisations include in their statutes or internal rules selection procedures and establish controls to prevent the intervention of internal directors, or limit their possible intervention in the appointment of independent directors so that the choice is subject to a formal and transparent procedure with proposals supported by members of the nomination and remuneration committee, or the board's independent directors.

Additionally, LCAGC in its Provision No. 26 says that individuals elected as independent board members should state their independence both from the company and from its shareholders and directors with the duty to declare any act likely to question their independence. Similarly, the board must declare that it considers candidates to be independent based on their own statements and the findings from enquiries that the board may have done.

The results from the CAF's 2006 diagnosis on Corporate Governance for the Andean region show that on average boards have four directors who are shareholders or represent shareholders and have no ties with companies' executives. This number represents 57% of the average number of members of the boards (seven). On average the firms surveyed for this study with 3 members on the board had two independent board members and one that belonged to management or had a contract signed by the company.

Furthermore, the study in Ecuador by the Quito Stock Exchange[66] found only 46% of companies had any independent directors. There may thus not be enough openness on the part of companies to include outsiders on their boards who can add value and be able to participate in decision-making from an objective point of view. In some cases

[66] The survey was carried out in2007 by Maria Soledad Salvador a BVQ's (Quito Stock Exchange) official.

entrepreneurs see the opinion of external Board members as interference in the company's affairs.

Similarly, the study carried out in Colombia by the Superintendence of Companies (Table 7.19) found that 22% of companies have only internal members on their boards, 18.6% of companies have Boards shaped entirely by independent external members, 17.8% have internal and external independent members, equally 17.8% of the boards have internal and dependant external members, 17.2% of companies have a Board with a membership of internal, external and independent external directors on their boards, 4.4 % have a combination of external dependent and independent board members, and 2.2% of the respondent companies have a board composed only of dependent external members.

Table 7.19 Category of Board Members

Class of Board Members	%
Companies with only internal board members (Executive directors)	22.0
Companies with only independent members in their boards	18.6
Boards with a mix of independent and executive directors	17.8
Boards integrated by external dependent and executive directors	17.8
Boards with a mix of executive directors, external dependent and independent members	17.2
Boards with a mix of external dependent and independent members	4.4
Boards integrated only by dependent external members	2.2

Source: Colombian Superintendence of Companies – September 2008 national survey

According to the results of the mini survey conducted by the author of this research, only 8.8% of participants strongly agree that a board should have non-executive directors (Table 7.20). 60% agreed to some extent with the inclusion of non-executive directors (NED) on the board. However, 50% of the students who answered the survey express some disagreement with the inclusion of independent NED in the board. Equally, 36% of others strongly disagree with the idea of having independent directors, this contrary to the believe that the inclusion of independent NED is an indication that companies intend to be transparent, and safeguard the interest to all their stakeholders, this provides evidence to answer the first research question. Some of the research participants manifest their scepticism about the benefits of having NED as they argue that some times is difficult to determine their true independence, or what interests they are representing. Equally, in some cases is impossible stop the creation of grouping of NED who operates on their own and to the exclusion of executive directors. Nevertheless, most of the research participants believe that providing there is an appropriate balance between executive and NED and roles and responsibilities are adequately defined, the appointment of suitable NED to the board can only bring advantages to the board of an organisation.

In addition, information from the annual reports and other documents obtained from companies that participated in CAF's Pilot study, the majority of which are family-owned businesses, shows that board members in most cases are individuals belonging to the same family that owns the company.

Table 7.20 Independent non-executive directors on the Board

Economic activity	Independent NEDs on the Board					Total
	Strongly agree	Some agreement	Agree	Some disagreement	Strongly disagree	
Entrepreneur	9.1%	9.1%	40.9%	18.2%	22.7%	100.0%
Adviser	9.8%	26.8%	29.3%	24.4%	9.8%	100.0%
Student		33.3%	16.7%	50.0%		100.0%
Other	9.1%	18.2%	18.2%	18.2%	36.4%	100.0%
Total	8.8%	21.3%	30.0%	23.8%	16.3%	100.0%

Note: this table shows results from the 'mini' survey carried out in Colombia by the researcher

7.8.3 Board committees

In addition to the formal structures of a board, they also should have provisions for board committees, especially audit committees as in Provision No. 40 (Exhibit 7.4). It is considered that this should be the way corporate governance is exercised, regardless of the type of organisation. For example, in a large organisation, a state-owned enterprise, a small company, or a family business it is important to be transparent and accountable. Therefore, a company needs to have particular features in place; a board structure including an audit committee, a remuneration committee and any other required committees to provide the appropriate level of compliance of corporate governance standards. However, some companies may not need to be so formal and may use alternative ways to implement procedures to interact with stakeholders of the organisation, which involves the exercise of good governance for the organisation.

Exhibit 7.4

LCAGC, Provision No. 40: *the Board of Directors should form committees to exercise certain functions in particular audit, nomination and remuneration, consisting exclusively of outside directors. The board allocates powers in different areas to each of the directors, who will be responsible for monitoring and control.*

Note: This shows a small part of a provision from Chapter V: The Board of the Guidelines for the Andean Code of Corporate Governance (LCAGC) as translated by the author.

Opinion about board committees varies depending on the organisation. For example, there are boards operating without committees because individual members cover all the functions often entrusted to committees. However, when an organisation grows there is a need to develop the necessary committees. Table 7.21 shows the findings from the author's own survey on Corporate Governance Developments in the Andean Region, and only 28.6% of the entrepreneurs strongly agree with the view that boards should have special committees; this policy is better seen by the advisers as 90.2% of them agree that board committees are necessary.

Table 7.21 Respondents' views on whether a Board should have special Committees

Economic activity	Board Committees					
	Strongly agree	Some agreement	Agree	Some disagreement	Strongly disagree	Total
Entrepreneur	28.6%	33.3%	14.3%	14.3%	9.5%	100.0%
Adviser	63.4%	19.5%	7.3%	4.9%	4.9%	100.0%
Student	50.0%	33.3%	16.7%			100.0%
Other	36.4%	18.2%	36.4%	9.1%		100.0%
Total	49.4%	24.1%	13.9%	7.6%	5.1%	100.0%

Note: this table shows results from the 'mini' survey carried out in Colombia by the researcher

According to CAF's Diagnosis of Practice for Corporate Governance in the Andean Region, 34% of boards do not have committees, regardless of their status as listed or not. Fifty-two percent of the companies surveyed have an audit committee, 34% of them have a risk committee, and 16% have a nomination and remuneration committee. The Survey also found that only 19% of listed companies but 8% of non-listed companies have one audit committee. Similarly 31% of companies claim to have other committees such as credit, investments, planning, ethics and environmental management committee. CAF's Diagnosis of Corporate Governance Practices in the Andean Region clarifies that a large number of companies that have an audit committee is probably because a high percentage of the study sample are financial institutions in countries that observe all or part of the principles of Basel I and II[67], which already requires this.

67 The Basel Committee on Banking Supervision – issued the Core Principles for Effective Bank Supervision (BCPs), a document summarising best practices in the field.

7.8.4 Remuneration policies

Corporate governance policies should be decided by each organisation. However, at the level of Board of Directors there should be clarity in regard to directors' remuneration Provision 32 of the LCAGC presents suggestions about board remuneration (Exhibit 7.5).

Exhibit 7.5

LCAGC, Provision No. 32: *The Board should be adequately remunerated; the remuneration should be consistent with company and director performance. The remuneration will be transparent, for which the board shall include in its annual report information on the total remuneration received by its managers.*

Note: This shows a small part of a provision from Chapter V: The Board of the Guidelines for the Andean Code of Corporate Governance (LCAGC) as translated by the author.

Interviewee B1 mentioned that in some countries people believe that individuals want to be directors of large organisations only for the prestige it gives of being a director, and the greater the organisation the greater the prestige. However, in reality directors are expected to fulfil the roles of a director, and this is a job that takes time and dedication. Therefore, their remuneration should be commensurate with the duties performed and must be defined within the corporate governance arrangements.

In Peru, despite the LCAGC's recommendations a company is free to decide how to compensate its directors. For example COPEINCA a Peruvian Company that took part in CAF's Pilot Study that is also listed on a European Stock Market, has determined that company directors should not be awarded share options as a part of their remuneration package. COPEINCA's annual report reads:

> "The remuneration of the board of directors should reflect the board's responsibility, expertise, time commitment and the complexity of the company's activities. The remuneration of the board of directors should not be linked to the company's performance; the company should not grant share options to members of its board" (p 63).

Equally, many entrepreneurs do not appreciate the need to offer and pay a proper remuneration to attract independent directors with the skills and experience necessary to perform the duties of a board of member as Interviewee C2 mentioned:

> "Colombian companies still do not understand that the remuneration of an executive board member must be high. That is not in the consciousness of Colombians; the entrepreneur believes he is paying too much if he pays a million pesos [just over 400 US dollars] for attending board meetings".

According to CAF's Diagnosis of Practice for Corporate Governance, the remuneration of directors is generally passed by the General Assembly in 62% of cases. In the case of listed companies, this figure rises to 77%. In 14% of the companies there is no remuneration for directors, and this is more frequent in non-listed companies. It is also noted that the practice of unpaid directors is not advisable as these individuals have responsibilities on the effective running of a company. Some participants argue that is more feasible when there is a contract to provide a sound return for the services a board member provides. Additionally, CAF's report highlights that 12.5% of the companies base directors' remuneration on the results of the company, and that this practice is more common in listed companies. In 8% of companies the board members decide their own remuneration, while in 4.7% of the cases this is exercised by the Chief Executive.

Companies are free to decide the amount and the way directors are remunerated, for example, the following statement is taken from the bylaw of BancoSol one of the companies in CAF's Pilot Study.

> "Remuneration of Board members shall be fixed by the General Assembly of Shareholders of the Company, pursuant to the criteria of entrepreneurship. The remuneration will be transparent, and for this purpose will be made known their amount, expressed in "Unidades Tributarias Mensuales (UTM)"[68]. The value set for the remuneration of members of the Board will be paid in a monthly basis, with prior attendance at meetings, which will appear in the respective minutes" (p 21).

An additional example is taken from 2007 Annual Board Report from Bancaribe's[69] Chairman regarding the maximum amount of remuneration to directors and senior executives:

> "The total amount of salaries, allowances and other remunerations paid to the President of the Bank, the Chairperson of the Board of Directors, the Executive Chairman and the senior executives of the Bank during the period of the account, is determined in connection with the provisions of the General Law on Banks and Other Financial Institutions[70], and for 2007 correspond to the equivalent to 5.4%[71] of the cost of processing for that period".

[68] The UTM are units determined by law and continually updated, which serve as measures or references for tax purposes.

[69] Bancaribe is Venezuelan Bank that took part in CAF's Pilot Study

[70] In Venezuela, the Constitution allows the country's president (Hugo Chavez Frias) to issue Decrees with 'scope, value and force of law' in matters which are delegated at Ministers meetings. Among the decrees issued by the president is this which regulates certain banking operations, and is mandatory for financial institutions such as Bancaribe.

[71] Maximum allowed is 20%

Some interviewees mention that this matter is handled differently from the U.S., where companies offer 'share options'. They also have a higher instance of variable pay than fixed pay, to align directors' interests with the interests of the company and the shareholders. Members work for the company and when the company is successful, they are also successful. Another problem in Latin America is that to save costs, board alternate members do not attend meetings. This may affect their performance in the case they are called to the place of a principal member as generally alternate member do not get involve in the normal running of the board.

7.8.5 Disclosure of information

Disclosure pays an important role in corporate governance. Disclosure of information is necessary to allow investors and company owners to make informed decisions. Almost all corporate governance codes around the world, including the OECD, the Cadbury Report, the King II, and the CAF's corporate governance guidelines, specifically require the board of directors to provide shareholders and other stakeholders with information on the financial and operating results of an organisation to enable them to properly understand the nature of the business, its current state of affairs and how it is being developed for the future.

However, despite an increasing awareness through the world that stakeholder requirements must be met in order to attract and retain long-term low-cost capital, many Andean companies still oppose disclosing information. For example, there is some agreement that the Colombian market is not growing because companies are afraid to disclose information. The lack of disclosure for example of names of board members and information about board members' remuneration are related to the armed conflict that prevents the disclosure of information about individuals and their capital as they might then become candidates for kidnapping. Kourt Shalker in his presentation at the seminar of corporate governance for Small business[72] in Colombia attended by the researcher explains the importance of disclosures and transparency for all businesses:

[72] "Good Practices for Small and Family Businesses Seminar" Universidad Minuto de Dios, Bogotá 05-06 October 2008

> "As for relations with investors and interest groups [stakeholders], credibility is a product of transparency. And basically it happens when it is possible to verify the information given by the company to its investors and to the market in particular as sufficient, realistic, reliable and timely. This facilitates the review of company's standards and financial policies. The appointment of auditors also pays and important role in this matter".

In CAF's 2006 manual for close capital companies it states that "A general principle for the smooth running of a company, board members should be adequately remunerated" (p 46). Some interviewees argue that shareholders expect the remuneration of board members to attract competent people, so that remuneration is in line with directors and company performance. This would be expected if accompanied by measures to ensure the disclosure of sufficient information to enable shareholders to assess that the remuneration offered to its directors is reasonable and meets appointees' expectations.

An additional matter mentioned for some participants is that companies normally do not disclose amounts paid to their executive directors. As explained by Cesar Prado, the Colombian Superintendent of Finance at an event attended by the researcher on the results of its Corporate Governance survey[73]:

> "It seemed odd that companies do not comply with Provision 32, as it appears elemental disclosure, general policies applicable with the market; companies need to be transparent regarding any economic benefit to be granted to directors, tax advisers, outside consultants and specialised audits. It is possible that there are linked to issues of confidentiality for security reasons, but in any case, this is an issue that is also worth thinking about".

Equally, Interviewees B1, and B4 mentioned that disclosure on related party transactions remains one of the weakest areas in the region, however, despite its being highly relevant to investors. This clearly does not fit with stakeholder engagement and a desire to show directors accountability; it also provides evidence to answer research questions one and two. The next section discusses important corporate governance issues as are internal controls and risk management.

7.8.6 Internal controls and risk management

Internal controls protect businesses and create an environment to increase shareholder value, and increase the level of compliance with rules and regulations. An effective

[73] The Colombian Superintendence of Finances distributes annually a questionnaire which is of compulsory completion by companies under the Superintendence supervision.

system of corporate governance should enable both compliance and performance to be achieved to meet the reasonable expectations of stakeholders. Using internal controls and risk management systems. These should constitute part of its framework of accountability and regular reporting to shareholders. Accordingly interviewee B4 pointed out:

> "An internal control system encompasses the policies, processes, tasks, behaviour, and other aspects of a company that taken together facilitate its effective and efficient operation by enabling it to respond appropriately to significant business, operational, financial compliance, and other risks in relation to achieving the company objectives".

This includes the safeguarding of assets from inappropriate use or from loss or fraud, and ensuring that liabilities are identified and managed and to help ensure the quality of internal and external reporting. This requires the maintenance of proper records and processes that generate a flow of timely, relevant and reliable information from within and outside the organisation. This helps ensure compliance with applicable laws and regulations, also with internal policies with respect to the conduct of business. Interviewee B2 argues:

> "The process of risk management involves the understanding of organisational objectives identification of the risks associated with achieving or not achieving them and assessing the likelihood and potential impact of particular risks; developing programmes to address the identified risks; and monitoring and evaluating the risks and arrangements in place to address them".

Reviewing the effectiveness of internal controls is an essential part of the board's responsibilities. Some participants agree that management is accountable to the board for designing, operating, and monitoring the system of internal controls and for providing assurance to the board. The board needs to form its view on the effectiveness after due and careful enquiry based on the information and assurance provided to it.

The board of many companies carry out their duties through functional committees. The various committees can each bring different perspectives to the components of internal controls and may be in a position to advise or assist the board on relevant policy issues. An example of an internal audit function can be taken from Seguros Bolivar's[74] Corporate Governance Code:

[74] Seguros Bolivar is a Colombian insurance group of companies that took part on CAF's Pilot Study.

> "The company has an 'Area of Internal Audit' in charge of developing the activity of internal control. This area is also responsible for overseeing risk management activities".

In the absence of an internal audit function, management needs to apply other monitoring processes in order to assure itself, and the board, that the system of internal control is operating as intended. In these circumstances, the board will need to assess whether such processes provide sufficient and objective assurance. As suggested by Interviewee B3:

> "An important issue in relation to a company's internal controls is the role played by internal audit. It is advisable that companies that do not have an internal audit function should review the need for one on an annual basis and should disclose the outcome of such review in the company's corporate governance report".

Interviewees B3 and D1 suggest that where there is good corporate governance, internal controls and risk management should be integrated; Interviewee C1 pointed out: "Good corporate governance in one way or another has to do with the management of risks facing the organisation". Thus the board should have control mechanisms, for example, there should be regular audits, with appropriate arrangements for managing conflicts of interest. There should also be the right people in place. For example, if the internal/external auditor communicates any concern to the general manager who is responsible for the organisation these concerns should be dealt with according to standards previously established at the company. So it is advisable that the auditor reports to the board, and the board takes the necessary measures in accordance with the auditor's recommendations.

A company must ensure that it has clear objectives that are agreed by the board and understood by all employees, starting with senior management. Companies should identify, assess, and prioritise the risks that could prevent them from achieving their objectives, and establish processes to manage them effectively. There is a need to have a good system of communication in place not only internally, but also with external parties such as auditors and regulators.

In addition LCAGC Provision No. 51 (Exhibit 7.6) deals with the guidelines related to the resolution of conflicts. This is an important corporate governance issue. Table 7.22 shows that 88.8% of the researcher's survey participants agree to some extent that companies should implement procedures for the resolution of conflicts of interest.

Exhibit 7.6

LCAGC, Provision No. 51: *The lack of flexible mechanisms to resolve internal conflicts within the company in general is a concern, both for shareholders and for a range of stakeholders [suppliers, customers, banks, etc..], it is recommended to look at the experiences of other a similar company in which the quick resolution of such conflicts did contribute to such stability.*

Note: This shows a small part of a provision from Chapter V: The Board of the Guidelines for the Andean Code of Corporate Governance (LCAGC) as translated by the author.

Table 7.22 Procedures for resolving conflicts of interest

Economic activity	Conflicts of interest resolution					Total
	Strongly agree	Some agreement	Agree	Some disagreement	Strongly disagree	
Entrepreneur	63.6%	13.6%		4.5%	18.2%	100.0%
Adviser	82.9%	4.9%	4.9%		7.3%	100.0%
Student	83.3%		16.7%			100.0%
Other	72.7%	18.2%		9.1%		100.0%
Total	76.3%	8.8%	3.8%	2.5%	8.8%	100.0%

Note: this table shows results from the 'mini' survey carried out in Colombia by the researcher

Some interviewees agree that enhancing corporate governance is not simply a matter of imposing rules and laws, but rather, about promoting and developing an ethical and healthy culture. This evidence helps to answer research question three as these measures may add to the perceive legitimacy of the activities of organisations. This is Interviewee's B4 view when stating:

> "The development of a sound system of internal controls and reviewing its effectiveness is not a learning exercise to comply with unwelcome rules, but, rather, it is about implementing mechanisms that will help to achieve corporate objectives and fulfil the expectations of company stakeholders".

In fact, companies do indeed follow these recommendations. This can be seen across the annual reports, for example COPEINCA in its annual corporate governance report, states:

> "The main objective of the Board regarding internal control is to ensure the efficiency and efficacy of internal processes and oversee the fulfilment of rules, policies and objectives, including applicable laws and regulations in force. It must also be thoroughly informed about financial and operating information, the company's business model, the risks associated with its economic activities, and its long-term sustainability. In summary, the Board must make sure that the company has the necessary control systems in place in all fields and that these systems are permanently updated to guarantee their optimum operation. COPEINCA annually identifies and evaluates risks that could affect the attainment of the Company's objectives and establishes control and monitoring

activities to mitigate these risks accordingly. The company has an internal audit department of four people. The internal control activities are detailed in the Company's internal rules and procedures and the vast majority is done through SAP" (p 30).

An additional example is taken from Seguros Bolivar's Corporate Governance Code, where the company sets out, among others its internal control rules:

> "The internal control system of the company includes the organisation and all methods and procedures which provide to shareholders and the various interest groups, reasonable assurance regarding:
> 1. Reliability of the processes through which financial information is generated from the Company,
> 2. No mobilisation of funds of illicit origin through the Company and
> 3. Assessment and monitoring of specific risks
> Analysis and monitoring of the Internal Control System of the Company in areas of particular relevance is done through 'committees' that provide the Board and management information, evidence and suggestions to ensure that the Internal Control System adjust to the Company's needs so that it can properly perform its objectives and achieve its goals" (p 9).

Unfortunately, there are a good number of companies where some or most of the elements of a control system have been lacking and indeed, some have failed because of it as noted by B2. Despite having good business prospects on paper, some companies have grown too fast and their internal control and risk management systems have failed to cope with the expansion. Others have failed to install proper check and balance mechanisms, and thus failed to identify early signs of problems, and yet others have succumbed under the personalities of dominant board members and controlling shareholders. Interviewee B2 states:

> "While a good internal control system may not prevent all a company's problems, they can help to provide reasonable assurance that a sound business in the hands of decision makers with good sense and judgement will succeed in their objectives".

Managers are aware of the benefits that a sound system of internal controls brings to a company, and this is the view of interviewee D2 who mentions:

> "It is a good practice for companies to establish an internal function to undertake regular monitoring of key controls and procedures. Such regular monitoring is an integral part of a company's system of internal control and helps to ensure its effectiveness".

Further, some interviewees pointed out that internal audits can make a significant and valuable contribution to the company by providing advice on risk management, especially design, implementation and operation of internal control systems; enhancing efficient and effective risk control management by identifying opportunities to save costs of control; and promoting risks and control concepts within the company, such as by running or facilitating control-self-assessment programmes.

In addition some interviewees mentioned the role played by audit committees in the control and risk management framework of a company, including the review process. The duties of the audit committee include those relating to the overview of the company financial reporting system and internal control procedures. This is clear for some companies as can be seen from COPEINCA and Seguros Bolivar Corporate Governance Reports, respectively:

> "COPEINCA has established an audit committee that assists the Board by reviewing, valuating and where necessary proposing appropriate measures in respect of the group's internal and external auditing" (p 67).
>
> "It is the duty of the company's internal auditor submits regularly reports about its activities to board of directors, its Chairman and the audit committee" (p 9).

Equally, some interviewees suggested that company personnel such as senior managers may be assigned responsibilities for guiding the development and implementation of internal control policies and procedures, and ensuring that these are consistent with the company's general objectives. Unit managers are usually more hands-on in planning and executing internal controls, monitoring their application, and reporting to senior managers the functioning of relevant controls. This reasoning reflects the participants' expectations of management and companies' accountability toward their stakeholders.

7.8.7 Auditors' appointment

CAF Guidelines for the Andean Corporate Governance Code (LCAGC) recommend the external audit as an essential practice to facilitate third-party financing for companies. It cannot be said that an external audit should be a requirement only for large listed companies. LCAGC statement defines: "the audit of any company as the first clear sign of discipline and transparency" (p 23).

Some interviewees mentioned the importance of maintaining the independence of the external auditor; to do this they suggested that measures should be taken to ensure it.

Among the most noteworthy aspects is the duration of the service contract that links the auditor with the company and their independence must be for the period of their appointment. As a general premise, the independent auditors should be hired for a fixed term contract that may be renewed after evaluating the performance and professional independence demonstrated during the course of their duties.

LCAGC recommends, as a minimum standard rotating the partner and audit teams responsible for a company's audit at end of the fifth year (Provisions). A higher standard of corporate governance would be to establish maximum periods for carrying out the auditing functions, including an initial period and a maximum number of extensions, which might be between seven and nine years from the start of their services. After this the audit firm should be rotated. This is an area that generates conflicts of interest, as the auditor's income comes from the organisation, and it may be the case that if unfavourable reports are issued about the organisation, they may risk losing the appointment, and Interviewee D1 mentioned:

> "Some of the practices of good governance are auditor rotation after a certain period of time working for the company, the anticipation of the number of periods an audit firm's appointments may be renewed and when the auditors' team should be changed. Having new people coming every year to perform the audit work, may probably result in asking question about matters management would seem as normal under the previous audit team".

The remuneration received by the external auditor is usually is approved by the General Assembly of Shareholders, and should be included in public reports of the company. Also the board should report, on an annual basis, to the Assembly both the policy and decisions of the recruitment and replacement of external auditors and the percentage that represents the salary paid to the auditor as a percentage of the turnover of the company.

According to the results of the Diagnosis of Corporate Governance Practices in the Andean Region, in 47% of cases auditors are appointed by the General Meeting of Shareholders, 37% are appointed by the board, while only 7% are appointed by the Chief Executive in certain non-listed companies. It was also found that a large number of companies do not recognise that the appointment of the external auditor is one of the powers that must be retained by the General Meeting. 30% of auditors provide audit only services, others in addition to audit services provide information processing services

(30%), legal services (4%), consulting services for listed companies (18%), and 13% for non-listed companies which is against the code. As for the remuneration of the external auditor, the Diagnosis of Corporate Governance Practices in the Andean Region found that in 43% of cases the value of services and economic conditions agreed with the auditors are known only by the Board of Directors or senior executives. In only 2% of cases this value is published on the website of the company, 6% in public by circulated media and 19% in an internal circulation of media. By contrast in 20% of cases this information is not disclosed.

7.7 Summary

This chapter presents the research findings from the case study of CAF, which has been working with different organisations in each of the five Andean countries to implement corporate governance. Among CAF's counterparts are governmental, private and public organisations and some of them have special powers to enforce rules within its respective countries. CAF's work is normally focused on technical and financial contributions to the activities designed for each counterpart.

The case study findings provide different attitudes towards corporate governance through the Andean region, and provide some of the reasons why companies have taken the decision to implement the principles; the benefits expected from the implementation; and opinions about voluntary adoption and the need for more regulation. The analysis also includes other issues affecting corporate governance developments in the region, including the impact that the political situation in the Andean region has on corporate governance; and the effect of privatisation and nationalisation processes. In addition, the analysis includes the findings related to particular issues such as board of directors' structures, board committees, non-executive directors, internal controls and risk management.

Companies in each country have different reasons for the decision to implement governance practices. However, there is some agreement that corporate governance is about the 'formal and informal practices' that govern relationships within a company and all its stakeholders. This concurs with the idea that the long term success of any organisation is a function of the extent to which the needs and requirements of its various stakeholders can be balanced, without sacrificing any one to the other. The stakeholder concept suggests that organisations can benefit significantly from cooperating with stakeholder groups, incorporating their needs in the decision-making process. Additionally there is a shared view that corporate governance is essential for the economic development of large, small, family-owned, private, state-owned and public companies. There is also general agreement that the adoption of good practices will positively affect growth for the whole region.

Corporate Social Responsibility (CSR) is one area in which the stakeholders theory has been commonly applied (Ullmann, 1985; Davenport, 2000) because the changing nature of the business environment creates a demand for organisations to acknowledge their responsibility to a broader constituency than their shareholders/owners and to help solve important social problems especially those they may have created.

Promoters of corporate governance in the region agree that there are different factors to consider when recommending that companies implement the principles. For example, there should be a different emphasis in the case of family businesses, where one of the main problems is dealing with family matters. It is also important to understand the importance of corporate governance principles for SMEs; many believe that what it is needed is a different emphasis for SME family-owned businesses that are a key part of the Andean region's economy.

The case study results are very similar to the findings from the interviews. The results show that there are three different views of corporate governance as shown in Table 7.23, which summarises to whom organisations are accountable and whether corporate governance is adopted to show the legitimacy of organisations' activities. These views go from the narrow shareholder model, whose objective is to protect the interests of owners and shareholders to a broader view, which according to Freeman (1984) takes into account a wide range of groups who can, or are affected by, an organisation, to a CSR view. The summary presented in this table provides evidence that can be to answer the three research questions. Overall, the views taken from the case study participants coincide to a greater extent to those from interviewees from Colombia presented in chapter six. Therefore, is possible to say that not all research participants see corporate governance from a broad stakeholder perspective, accountability is not normally to all stakeholders, however it is widely accepted that the adoption of corporate governance principles helps organisations in the Andean region to show the legitimacy of their activities.

Table 7.23 Summary of the Corporate Governance Views from the Case Study Participants

Case Study Participants	RQ 1	RQ 2	RQ 3
G5: CAF staff	Support a broad stakeholder perspective However it is very different in reality	Accountability should be to all company's stakeholders	Corporate governance principles are also promote as a way to show the legitimacy of company activities
G6: CAF Counterparts	Promote a broad stakeholder approach, however in practice is difficult	Support the idea that accountability should be to all company's stakeholders	Supporting SOEs and newly privatised organisations to show the legitimisation of their activities
G7: CAF Pilot Study Companies	Making efforts to engage no only with the company owners or shareholders	There is a culture that lacks accountability and transparency	Companies show a growing interest in CSR issues and appearing that there are doing the right thing
Mini-Survey respondents	The majority have a have a narrow view, also some with a broad view or a CSR focus	Accountability is mostly to Shareholders or company owners	Majority (of students and company advisers) believe corporate governance helps to improve company legitimacy
Documents (Annual reports)	Companies express the at least the intention to engage with all their stakeholders	Accountability in annual reports is addressed to the organisation shareholders and governmental entities	Growing interest in show that companies are social responsible, this is also aimed to legitimate company activities
Others (i.e. Events)	Most of the events' speakers have a broad (stakeholder) view of corporate governance	Accountability should be towards all the stakeholder of an organisation	Support a CSR focus, agreeing that the adoption of corporate governance help an organisation to show their legitimacy

This table summarises the evidence gathered from the Case Study and which helps to answer helps to answer the three research questions:

- *Research Question 1 (RQ1) – Is corporate governance viewed from a broad stakeholder perspective?*
- *Research Question 2 (RQ2) – Is corporate governance implemented to enhance accountability to stakeholders?*
- *Research Question 3 (RQ3) – to what extent corporate governance is adopted to legitimate company activities?*

Regardless of the different rules within and between countries, as well as the different kinds of companies that exist, the principles that form the basic concepts on which some CAF counterparts have been working on and that make up the basic Guidelines for an Andean Code of Corporate Governance (LCAGC) are recommended to be applied on voluntary basis, not only for listed companies, rather for all sort of organisations always taken into account each country, laws, needs and economic characteristics. Moreover, the rules and mechanisms that enforce corporate governance vary across the Andean countries; the variations arise for the interplay of political, legal and economic factors.

Further, there are some practices which are undoubtedly of great importance to corporate governance among these are the different categories of board members, and the proportions that should exist between these categories, certain requirements on the candidates to be elected as directors, a suggested limited number of board members, also the importance of having independent members in the board, grouping those members in specific board committees, it is also important the freedom to perform in order to be efficient, and the appropriate economic compensation for directors services. For the same reason it is recommended that each country find a solution that enables an effective implementation for these practices.

In addition, there is some agreement among the research participants about the benefits and the need for companies of having a sound system of internal control and risks management. There is also evidence of the role the auditor play on risk control activities and engaging with audit committees.

The chapter also describes accountability and legitimacy and the case provided a view on how companies in the Andean region show whether they are accountable or need to demonstrate legitimacy toward their stakeholders. In this sense it is suggested that the implementation of good practices could improve or restore the trust in a company or that a company can show its legitimacy being transparent. Accountability is associated with transparency; it also involves an expectation or assumption of account giving behaviour; it is also focused on specific duties owed to stakeholders. Legitimacy refers to perceptions by stakeholders that the organisations' activities are appropriate in terns of expectations for good practices. Standards of accountability and legitimacy may come from sources such as policies, laws and norms. The evidence shows a consistent pattern of narrow stakeholders' perspective, no very strong accountability approach and some desire to implement corporate governance to legitimate company activities.

Table 7.23 presents a summary of the findings from the case study and which are used to answer the three research questions. Overall, the views taken from the case study participants coincide to a greater extent to those from interviewee from Colombia presented in chapter six.

CHAPTER EIGHT

Conclusions and Recommendations

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Conclusions and Recommendations

Introduction

This thesis examines a number of issues relating to the development of corporate governance principles in the Latin American Andean region and explains some of the reasons why organisations in the region want to implement them, such as whether they want to engage with their stakeholders, to be accountable to their stakeholders or because they want to legitimise their activities. To introduce the thesis Chapter two provides a context of the history, culture, political, economic and financial environment in the Latin American Andean region and Chapter three presents the literature review on the subject of corporate governance to give an understanding of the topic. Chapter four outlines the theoretical framework relating to this thesis and the research methods and methodology employed in this thesis are described in Chapter five. Specifically, interviews and a case study are used to address the research questions. Chapters six and seven present the results of the empirical work.

This chapter summarises the previous chapters, drawing together the principal findings from the analysis of the data gathered through interviews with stakeholders in Colombia and a case study based on the Andean Development Corporation (CAF). In particular the analysis investigates specific issues related to who is promoting and supporting the implementation, how this work is done and the reasons why companies are adopting the principles. The research findings are interpreted within a theoretical framework that comprises stakeholders, accountability and legitimacy. As mentioned in Chapter one, the following research questions are examined in this thesis:

1. *Is corporate governance viewed from a broad stakeholder perspective?*
2. *To what extent do companies in the Latin American Andean Region implement corporate governance principles to enhance their accountability to stakeholders?*
3. *To what extent does the implementation of corporate governance by organisations in the Latin American Andean region reflect their need to legitimise their activities to stakeholders?*

The chapter is organised as follows: Section 8.1 summarises the empirical findings; Section 8.2 introduces the contribution to knowledge; the limitations of the study are discussed in section 8.3; section 8.4 includes some avenues for further research; and section 8.5 presents some concluding comments. The following sections introduce a summary of the study's key findings answering the research questions and providing a general understanding of corporate governance developments in the Latin American Andean region. It is important to mention that a piece of evidence can be used to answer more that one of the research question set for this study, therefore to avoid duplication a section may contain findings that help to answer several research questions.

8.1 Summary of empirical findings

This section summarises the two strands of the empirical analysis, highlighting differences but also drawing together common themes from the interviewees and the case study, providing answers to the three research questions. The structure of this research centres on examining, comparing and evaluating CAF's efforts in promoting the implementation of corporate governance in the Latin America Andean Region, the activities organisations are doing to improve corporate governance standards in the region, and in identifying the reasons why Andean companies decide to implement corporate governance principles.

From the results of this thesis there are three main corporate governance approaches in the region based on the views of different stakeholders. A summary of these three corporate governance approaches can be seen in Table 8.1 which analyses the extent to which corporate governance is viewed form a broad stakeholders perspective or a narrow one (S_t), enhances accountability to stakeholders (A) and the legitimacy of corporate activities (L). To facilitate the interpretation of the measurement, three criteria were set: strong (S), medium (M) and weak (W). Different stakeholders think that corporate governance is implemented for different reasons.

Table 8.1 shows that regulators and promoters have a very narrow view of corporate governance, where stakeholder, accountability and legitimacy approaches to corporate governance are weak and an agency view is taken that only shareholders are important.

SME managers and independent directors have a wider view and think that corporate governance is implemented from a stakeholder and accountability perspective but legitimacy is weak. Managers from large companies, SOE officials, auditors and academics have a CSR focus. This approach considers corporate governance frameworks to balance the different and sometimes competing interests, of a broad range of stakeholders that enhance accountability to stakeholders and legitimate companies activities. The next section considers the answers to the three research questions.

Table 8.1 Corporate governance approaches

View/focus	Groups	Results	St	A	L
Narrow	○ Regulators ○ Promoters	• Only shareholders rights are important	**W**	**W**	**W**
Wider	○ SME's Managers ○ Ind.-Directors	• Engage Stakeholders • Accountability to all stakeholders	**S**	**S**	**W**
CSR	○ Large Company Managers ○ SOE's Officials ○ Auditors ○ Academics	• Engage Stakeholders • Accountability to all stakeholders • Legitimise company activities	**S**	**S**	**S**

This figures summarises the three corporate governance approaches discussed in this study
St *Engagement with Stakeholders;* ***A*** *Accountability to stakeholders;* ***L*** *Implementation to demonstrate Legitimacy of company activities.* ***S*** *Strong;* ***M*** *Medium;* ***W*** *Weak*

8.1.1 Corporate governance viewed from a stakeholder's perspective

The first research question concerns the issue of whether corporate governance is viewed from a broad stakeholder perspective. The answer to this question provides a general understanding of how corporate governance is seen in the Andean region including issues such as the definition, promotion of the principles and attitudes towards the issue. Evidence gathered through the interviews and the case study agrees with Freeman's (1984) view that an organisation is a gathering of various stakeholders, like owners, investors, management, employees, customers, government and society. The concept of stakeholders is built around interested groups and the make-up of their relations helps with the company and the effect that these relations have in organisational processes. To answer research question one it is important to consider the different corporate governance approaches individuals have through the region. The evidence shows that among the research participants there are three approaches: first are those who believe that, because managers are agents of the company's owners— the shareholders— managers should always act in the best interest of the company's owners. For the second approach, businesses have an obligation to conduct themselves in a way that treats each stakeholder fairly. This view does not disregard the preferences and claims of shareholders, but takes shareholders interests into consideration to the extent that their interests coincide with the greater good. The third approach is that organisations cannot function independently of the stakeholder environment in which they operate.

Different sets of corporate governance definitions were obtained from the interviewees and case study participants. Some of these definitions related corporate governance to 'control' as provided by Cadbury's frequently quoted or paraphrased: "Corporate governance is the system by which businesses are directed and controlled" (Cadbury. 1992). In addition, a number of definitions related corporate governance to the legal framework, rules and procedures and private sector conduct. Also common in the definitions were relationships between shareholders, boards and managers. This is a *narrow view*, which considers that a company is run in the interest of shareholders. It is also deemed that this view incorporates accountability only to shareholders.

In general, those who see corporate governance related just to majority and minority shareholders, tend to believe that corporate governance structures should protect and enhance accountability to, and ensure equal financial treatment of, shareholders. And action should not be taken if its purpose is to reduce accountability to shareholders.

Second, there is a *wider focus* where companies pursue the interests of a wide variety of stakeholders; this agrees with the view of Allen and Gale (2000). A definition given by the President of Ecuador stock exchange (BVQ), one of CAF's counterparts in the Andean region, adopts a wider stakeholder approach which includes accountability to stakeholders but it does not consider the legitimacy of company activities.

Third, some of the participants provide a definition which adopts a *CSR focus*; under this view corporate governance is concerned with ensuring that companies are run in such a way that society's resources are used efficiently. It is about commitment to values, about ethical business conduct and about making a distinction between personal and corporate funds in the management of a company. Ethical dilemmas arise from conflicting interests of the parties involved. In this regard, managers make decisions based on a set of principles influenced by the values, context and culture of the organisation. Ethical leadership is good for business as the organisation is seen to conduct its business in line with the expectations of all stakeholders. This focus takes into consideration accountability to all stakeholders and the legitimacy of company activities; among these there is the definition taken from the annual report of 'Seguros Bolivar', one of the companies that took park on CAF's Pilot Study.

The view of some participants, who believe that corporate governance, to some extent, has to do with the acceptance by management of the inalienable rights of shareholders as the true owners of an organisation and of their own role as trustees on behalf of the stakeholders, also helps to answer research question one. Participants also believe that corporate governance deals with the conduct of the affairs of a company in a way that there is fairness to all stakeholders and that its actions benefit the greatest number of stakeholders. In this regard, management needs to prevent asymmetry of benefits between various stakeholders, especially between the owner-managers and the rest of the stakeholders.

CAF and its counterparts have been promoting the implementation of corporate governance practices in Small and Medium Enterprises (SME). Support for corporate governance originates in these succession processes in family-owned businesses and in the companies attracting capital especially from foreign investors. However, some of the participants questioned whether owners and managers of SMEs are prepared to implement corporate governance principles in their organisations, and this takes into consideration cultural issues. There is not a culture of group ownership in most of the Andean countries and people are generally very individualist. This evidence also opposes a broad stakeholder perspective.

The majority of the interviewees and case study participants were aware of CAF's Corporate Governance Program, which focuses on the development of rules, as well as dissemination, implementation, and measurement in the application of corporate governance practices in the Andean region. They also knew that CAF had published

Corporate Governance Guidelines and has made available a corporate governance practice evaluation software application. Similarly, it was known that CAF provided support for public and private-sector institutions in the region to carry out local-level projects. Thus, CAF has been directly involved in awareness raising events, including international seminars on the topic in several cities throughout the Andean region. This shows a desire to include all stakeholders in the processes of corporate governance, at least from the point of view of those who are promoting the adoption of good practice in the region; this in part answers the first research question. However, the existence of high ownership concentration in the region and the large number of family-owned business and SMEs has not been favourable to the adoption of a stakeholder approach. Nevertheless, gradually more organisations are prepared to take into account the rights and obligations of all stakeholders of a company. Equally, across the five countries there is some agreement that corporate governance may be a valuable tool for running state-owned enterprises (SOEs) since they face equal, or even more, challenges than private companies. Evidence was found that suggests that a SOE cannot go bankrupt and cannot have its board or management removed by a takeover or proxy contest. In addition, they may have very low-cost subsidised loans. Table 8.2 summarises the responses of all the individuals that were interviewed in Colombia and in the case study participants' views on the stakeholders of the Andean companies.

Table 8.2 Stakeholders Responsibilities

Stakeholders	Responsibilities	№	% (1)
Shareholders	Sustain long-term relationships that generate mutual benefits	29	91
Regulators	Act with responsibility in the management of company resources	26	82
Society	Contribute to sustainable development and welfare	23	73
Customers	Act fairly with the competition	18	55
Suppliers	Advance procurement and contracting processes with transparency and accountability	14	45
Competitors	Provide quality goods at competitive costs	14	45
Employees	Compensate for their service and contribute to their wellbeing	12	36
Government	Contribute to the country's economic development	9	27

Note: This table summarises who interviews consider to be the stakeholders of companies
(1) Percentage based in 32 interviewees (21 interviews with Colombian stakeholders, 11 interviews for the Case study)

The table shows that shareholders are the most important stakeholders group but the regulator and society, are also important. Interestingly, employees and the government were not seen to be stakeholders so there is clearly a stakeholder perspective by including society; however, there is some confusion when including all stakeholders in this stakeholder new point

As well as different views of corporate governance by different stakeholder groups the approach also differs from one country to another. In Bolivia, there appears to be a wide spread view of engagement with stakeholders, and this is assessed as strong (S). This to some extent agrees with Gonzalez-Vega (1997, 1998), who argues that, due to the high number of micro-enterprises and poor households and the importance of such entities in the country's economy, there have been numerous activities aimed to engage stakeholders' interests during the process of transformation of non-profit institutions into commercial entities with clear ownership and governance structures. The people involved in the transforming process are general managers, board members, staff, and clients, all of whom have personal stakes in the outcome of the transformation.

There is some evidence showing that the private sector has played a key role in the effort to implement corporate governance practices in the region. In Bolivia the promoter of corporate governance has traditionally been the Bolivian Stock Exchange (Bolsa Boliviana de Valores – BBV); the BBV has received the help of the Chamber of Industry, Commerce and Services of Santa Cruz and Bolivian private universities. According to the National Institute of Statistics – (INE for its name in Spanish) the majority of businesses are micro-enterprises[75]. Due to the high number of very small businesses, the Superintendence of Companies, the corporate governance regulator in the country, has decided to centre corporate governance on rules, traditions, behaviour patterns and characteristics of the national economy and the country's legal system and not just on an imported western model or imitating what has been done elsewhere.

[75] A micro-enterprise is defined in Bolivia as an economic and productive unit where the owner is involved in the production process. Its activities imply coordinating a wide range of functions, such as money handling, market dealing, and management for an economically productive activity. According to the Bolivian National Chambers of Commerce classification of companies by number of employees a micro has less than 10 employees, a small between 11 and 20, a medium between 21 and 120, and a large more than 120 employees.

Equally, a representative of the Bolivian Superintendence of Companies defined corporate governance as a system of accountability and responsibility among shareholders, the board of directors, management, and other stakeholders of an organisation. He also mentioned that it encompasses both the decision making process and the accountability structure for achieving company strategic objectives. He also noted that corporate governance is fairness, transparency, accountability and responsibility and are the minimum standards that provide legitimacy to an organisation, reduce vulnerability to financial crises, and broaden and deepen access to capital. However, he noted that applying these principles across a wide variety of legal, economic, and social systems is not easy as issues such as capacity and vested interests prevail, particularly in the Andean region.

In Colombia '*Código País*' (p 3) recommends corporate governance principles primarily to be applied by listed companies. However this should not stop non-listed companies adopting them. An important feature of the corporate governance code is the regulation of conflicts of interest and the measures to protect the interests of minority shareholders. Accordingly, there is no clear intention to engage with all stakeholders; and the approach in Colombia to stakeholders is Medium (M). In addition the programs coordinated by Confecámaras and the Colombian Stock Exchange (BVC) to promote corporate governance have had a great impact on the Colombian business community. Confecámaras programs are stakeholder focused, supporting the idea that organisations have responsibilities towards all their stakeholders. At the same time, BVC has been promoting a more shareholder/owner corporate governance approach.

In Ecuador, one of the reasons SMEs and family owned business have been reluctant to implement corporate governance principles is because, in many cases, the owners are the managers or are able to work closely with them and can exert direct control. Therefore, from the view of the participants the stakeholder engagement approach in this case has been graded as Weak (W). Moreover, a National Executive committee on Good Corporate Governance was established in July 2004. This was integrated by the Superintendent of companies; the Superintendent of Banks and Insurance (both corporate supervisory and regulatory agencies in Ecuador); chambers of industry, commerce, small industry, and construction; associations of private banks; fund management companies; stock brokerage firms; the and Quito (Bolsa de Valores de Quito – BVQ) and Guayaquil Stock Exchanges; several universities; media groups; and consulting firms. The committee appointed the BVQ as the Technical Secretariat, and in January 2005, it adopted the Andean Corporate Governance Code (Codigó Andino de Govierno Corporativo – CAGC). Ecuador was the first country in the Andean region to adopt the CAGC) as a national standard. Adopting the CAGC is taking a stakeholder approach. However, the evidence shows that a narrow view, where shareholders are the main stakeholders, is widely accepted in the country.

In Peru the regulators promote a shareholder focus while many company managers take an approach that also takes into account the rights and obligations of all company stakeholders. For this reason this approach has been graded as Medium (M). Further, the traditional corporate governance supporter has been the Peruvian Promoter of Capital Markets Development (Asociación de Empresas Promotoras Del Mercado de Capitales, PROCAPITALES), also with the help of the Peruvian University of Applied Sciences (Universidad Peruana de Ciencias Aplicadas, UPC) and the National Supervisory Commission of Enterprises and Securities (Comisión Nacional Supervisora de Valores Del Peru CONASEV). People from PROCAPITALES, In Peru, it is believed that corporate governance originates with the idea of the modern company, which was initially concerned with the delegation of power over decision-making to managers other than the owners of companies. However, currently corporate governance practices have become recognised as a source of business value. Thus, corporate governance begins with a narrow view, but with the role played by interested parties such institutional investors a wider approach is increasingly being accepted by most stakeholders in Peru.

In Venezuela the regulations protect the rights of shareholders and the idea of stakeholders is very new. Consequently, this approach has been graded Weak (W). Additionally, in Venezuela the promotion of corporate governance implementation has been led by the Venezuelan Association of Executives (AVE), which has joined forces with the country regulator, the National Securities Commission (Comisión Nacional de Valores, CNV) and several private institutions such as the Venezuelan association of issuers, the Caracas Stock Exchange (Bolsa de Valores de Caracas – Bvc*), the National

Commission for the Promotion of Investments (Comisión Nacional para la Promoción de Inversiones, CONAPRI), and the Venezuelan Federaction of Industrialist, and Businessmen (Confederación Venezolana de Industriales CONINDUSTRIA). AVE's slogan for its corporate governance program has been "*Promoting a local agenda based on ethics, transparency and accountability*"; the corporate governance program is addressed to all sorts of companies, as according to AVE, the Venezuelan economy mainly consists of non-listed closed-capital companies, family-owned, state-owned, SME, and a low percentage of large non-listed companies. Corporate governance has been promoted as part of a social responsibility agenda, as it is believed that this is a good way to focus companies' commitment to their stakeholders. Organisations such as AVE and CONAPRI with the support of CAF have been promoting an initiative called '*Transparency Revolution*' also known as '*Responsible Competitiveness*' which aims to promote corporate governance practices. Evidence shows that there is the desire to have a stakeholder perspective for the implementation of corporate governance, however in reality engagement with all stakeholders is a different matter.

Overall, corporate governance in the Andean region has a stakeholder focus in Bolivia but not in the other countries. Table 8.3 summarises the degree of engagement with stakeholders in the corporate governance of each Andean country.

Table 8.3 Corporate governance: engagement with stakeholders

Country	Description	St
Bolivia	Microfinance activities, educating individuals to be able to exercise their rights	**S**
Colombia	Especial attention given to resolution of conflicts of interest	**M**
Ecuador	Shareholders are the primary stakeholders	**W**
Peru	*Regulators:* shareholders focus. *Managers:* stakeholder focus	**M**
Venezuela	Engaging with stakeholders is only made as a reference rather than a direct commitment to them – the primary concern is towards shareholders	**W**

Note: this table summarises the treatment given to stakeholders in each Andean country
***St** Engagement with Stakeholders; **S** Strong; **M** Medium; **W** Weak*

For many of the interviewees having a stable economic environment may have influenced the views of corporate governance. This is reflected in the importance given to features such as: having a fair board structure; the separation of the Chair from the Managing Director's function; training and induction of directors; the appointment of a higher number of independent directors; regular board meetings; board committees; regular audits; and risk management. Based on the evidence presented in chapters six and seven it is possible to say that there is general agreement that the adoption of corporate governance principles may enable organisations whether private, publicly traded, or state-owned to understand their rights and obligations better.

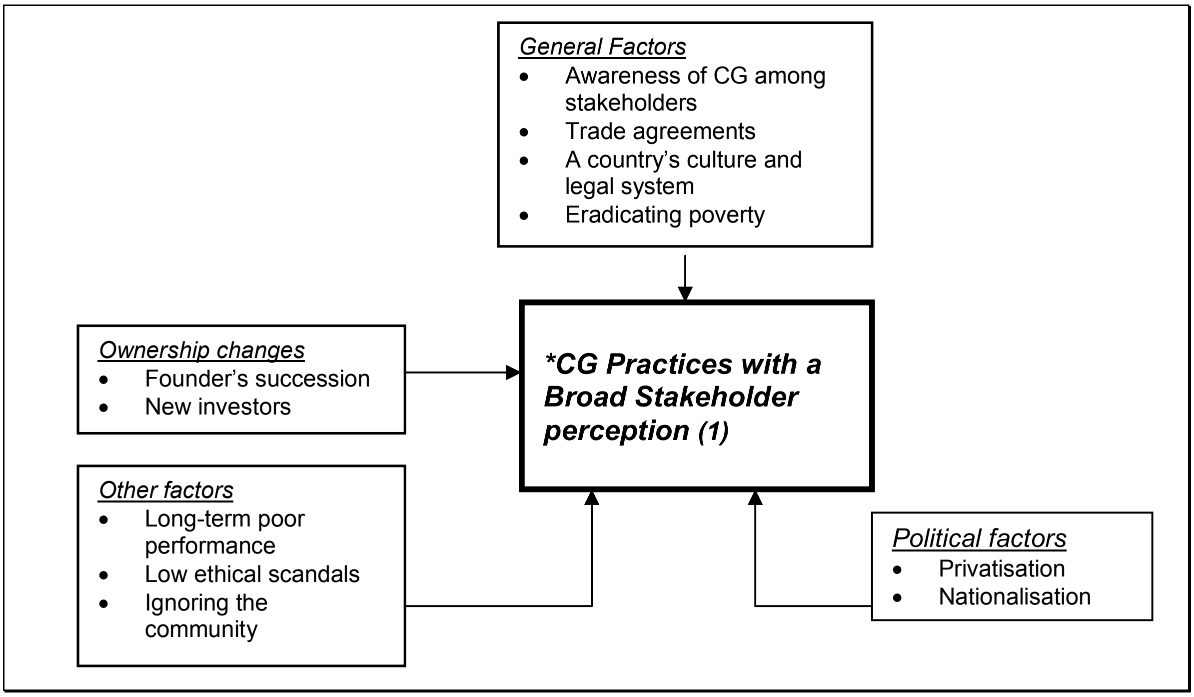
Ownership changes also place pressure on regulators. For example, changes in the political orientation of the countries bring privatisation or nationalisation waves. This is the case of Colombia where, as a result of partial or whole privatisation of some state-owned entities, both the Superintendence of Finance and the Superintendence Companies have issued corporate governance guidelines for newly privatised companies to encourage the protection of minority shareholders and other stakeholders. However, there is not a clear stakeholder focus.

In Bolivia, Ecuador and Venezuela changes in the political leadership have led to a different political and economic environment. Some of the research participants argued that in some cases it seems that the state does not have a positive attitude towards private organisations. The perception of some participants was that the legal system prevailing in these three countries is a comprehensive legal framework which tries to provide for everything, regulating most relevant issues in detail. Some also pointed out that government ownership and control are not known for promoting transparency and accountability. The belief among the participants, from both the interviews and the case study is that privatised organisations face daunting challenges, including the poor qualifications and lack of appropriate professional experience of state-appointed CEOs and board members.

Moreover, evidence from annual reports from some of the companies analysed for this study showed that after nationalisation the size of the board of directors was reduced and fewer independent directors were appointed to the board, proving a negative impact of nationalisation on corporate governance practices. There is also a tendency to disclose less information after nationalisation. The opposite occurs on privatised companies where the structure of the board of directors has been strengthened with the appointment of independent directors. Despite these political problems and looking at governance changes especially in nationalised organisations, the empirical results suggest that there has been an increase in the overall level of corporate governance practises in the Andean Region.

Figure 8.1 shows some of the results of this thesis and how changes in specific factors and pressures from related parties may shape a particular corporate governance approach and provides evidence to answer the first research question set for this study. To some extent most of the participants agree with the available literature (Handy, 2002; Zedek, 2006; Solomon, 2007) that there are a series of factors pushing for the adoption of a stakeholder focused corporate governance approach. Among these are *general factors* such as stakeholders' increasing requirements for organisations to pursue ends that go beyond the single interest of shareholders and that directors and officers should care for the interests of others involved in company activities.

Figure 8.1 Corporate Governance: Stakeholder Approach



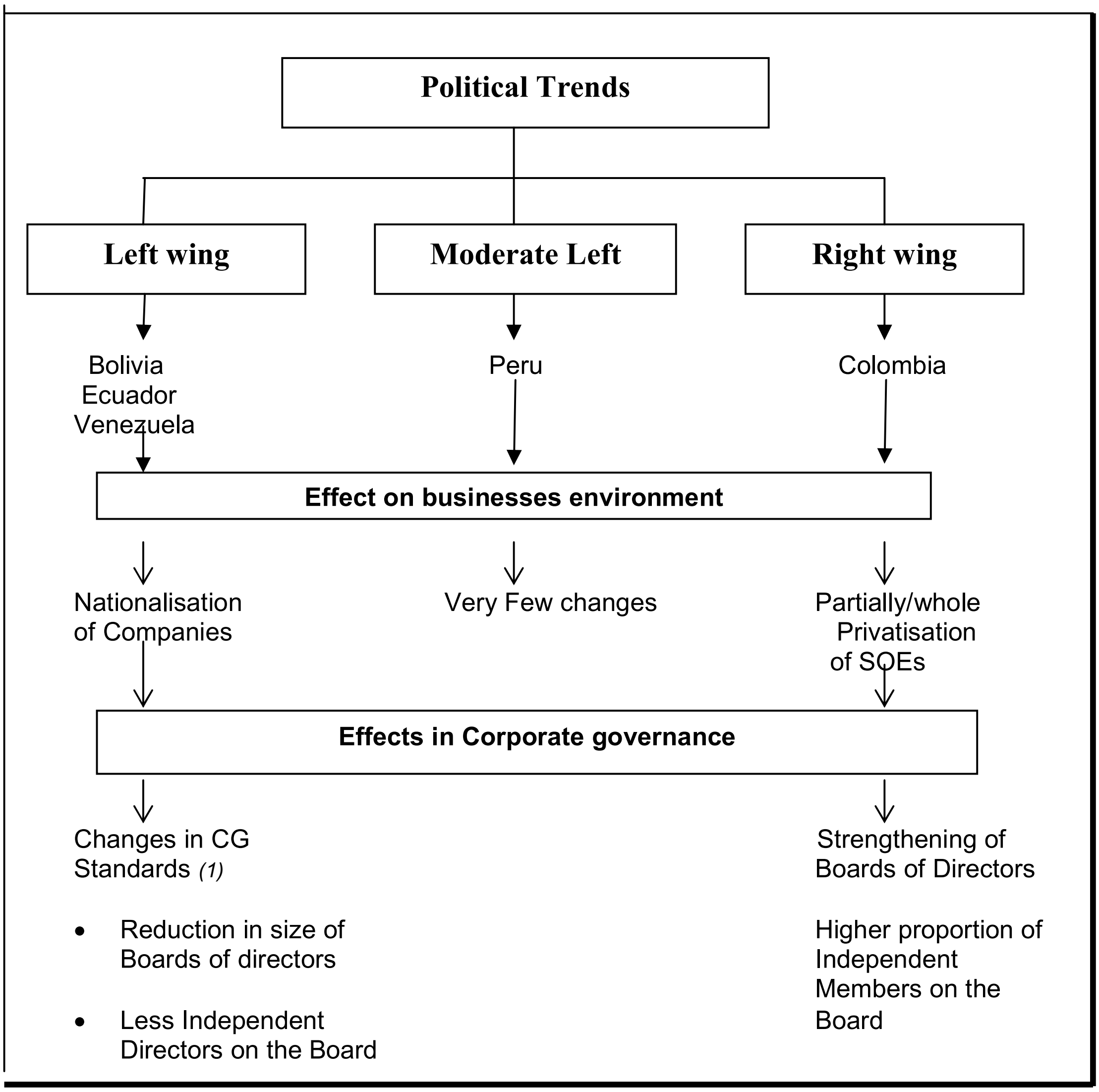
Note: This figure includes some of the issues influencing a corporate governance stakeholder approach. These factors are taken from evidence answering the first research question (1).

Most of the interviewees also agree that, currently, customers prefer to buy goods from companies they trust; suppliers are interested in business partnerships with companies they can rely on; employees would rather work for companies they can respect; and institutional investors tend to favour socially responsible firms. There are also pressures for the signing of trade agreements as companies in the area have the need to be more competitive. The same requirement is put on companies by governments as they are supporting their countries, sustainable development and eradication of poverty. Additional pressures come from factors causing organisations' *lose of legitimacy*. This has been the case of state-owned enterprises, which have been put in bankruptcy and as a result their officials have taken the decision to implement corporate governance principles as a response to calls for more transparency and accountability to constituencies.

Clearly, the political environment is very important to corporate governance in the region. Figure 8.2 summarises the modifications in corporate governance practices due to changes in the political environment. According to some of the research participants, the economy of countries such as Colombia and Peru have benefited from several factors, including stable political environments, flexible economic policies and inflows of foreign direct investments. These two countries have benefited from a few years of sustained economic growth, with a steady increase in GDP growth rates since 2003, although the governments have often been criticised for state intervention into economic development (Perry *et. al*., 2003; CIA, 2008, 2009).

The existence of a political structure that encourages the state withdrawal from economic activities and the privatisation of state-owned enterprises improve the scope for private business organisations (Gourevitch and Shinn, 2005). These research results agree with the view of Roe (2003), who argues that corporate governance arrangements inside an organisation interact with a nation's politics. Political forces— party systems, political institutions, political orientations of governments and coalitions, ideologies, and interest groups— are the primary determinants of the relationships among managers, owners, workers, and other stakeholders of the organisation. Whatever the formal specifications of corporate law, politics shapes on a daily basis the impact on all stakeholders helping to answer research question one.

Figure 8.2 Political Frameworks in the Andean Region



Note: this diagram summarises the changes in corporate governance practices due to changes in the political environment in the Andean countries.
(1) A conclusion reached from some Venezuelan companies that substantially reduce the size of their board of directors after nationalisation.

Some participants suggested that improved corporate governance and accountability requires an active board of directors with a good proportion of non-executive directors in relation to executive members; representatives from all groups of stakeholders; the separation of the role of CEO and chairperson; the creation of board committees; and rotating audit firms regularly. It is also believed that companies will gain from adopting a system that strengthens stakeholders trust through transparency, accountability and fairness. However, in reality in the Andean countries many businesses do not have a board of directors. Moreover, while Andean institutional investors have greater relevance than a few years ago, their portfolios are concentrated in government securities so there is little or minimal involvement of institutional investors with boards. This view of some of the participants, partially answers research question one that companies should design their corporate strategies to consider the interests of their stakeholders – groups and individuals that can be affected by the organisation's purposes (Freeman, 1984).

In relation to the recommended size of the board of directors, some participants agree that it depends upon the size of the company. For example, a Colombian independent consultant mentioned that for a small company in its early development stage it does not make much sense to have a board because the company is at a stage where the decisions are taken by one or two people and the numbers affected in terms of employees, suppliers or customers is very small. However as organisations grow, they should then review their governing bodies. As conditions change, there is a need for a board and independent directors to provide knowledge and relationships that can serve the organisation, and for rules so that all stakeholders are adequately represented. This view can be taken as a wider stakeholder approach, helping to answer research question one.

8.1.2 Implementing corporate governance to enhance company accountability to stakeholders

The second research question examines the extent to which companies in the Latin American Andean region implement corporate governance principles to enhance their accountability to stakeholders. This section highlights the main findings regarding accountability in the Andean region. The evidence suggests that the adoption of corporate governance principles may influence company's objectives, the degree of accountability, transparency, or the level of perceived corporate morality. However, an accountability focus also varied across the five Andean countries, as shown in Table 8.4. These views are based on the idea that successful companies are those that recognise that they have responsibilities to a range of stakeholders and the focus should not only be on enhancing shareholder value, but on engaging stakeholders for long-term value creation. The process of engagement creates a dynamic context of interaction, mutual respect, dialogue, change, and groundwork for transparency and accountability. Besides, such diverse stakeholders make competing accountability claims.

The findings show that in Bolivia there is little information available regarding the specifics of governance practices; therefore the grade for the country's approach to enhance accountability to stakeholders is Weak (W). For example the Inter-American Development Bank Report (2006) points out that the Stock Exchange is in an early stage of development and there is an "adverse business culture" that lacks transparency and accountability.

In Colombia, accountability is normally discharged through annual reports. Only recently, with the growing interest in the country for CSR issues, have individuals started to realise that organisations are also accountable to a wider group of stakeholders. However, there is not a stakeholder culture to hold organisations accountable thus the accountability approach in this case has been graded Medium (M).

In Ecuador the evidence shows that managers are accountable to boards of directors and discharge their accountability to the Superintendence of Companies through annual reports. However, the situation is not entirely clear. To some extent this is supported by the findings by Salvador (2007). She reports that the degree of protection provided by traditional mechanisms of internal and external corporate governance is not enough; in these circumstances controlling shareholders tend to expropriate the other stakeholders. To some extent the only clear thing is that management is accountable primarily to shareholders, therefore the issue of accountability towards all stakeholders has been graded weak (W).

The situation in Peru is quite similar to Colombia. Accountability is primarily owed to shareholders and investors. However, traditionally Peru scores better than its fellow Andean countries in transparency and the professionalism of its governmental organisations (Standard Forum, 2009); but as there is no accountability to all stakeholders the grade for the accountability approach is Medium (M).

The evidence also shows that under the administration of President Hugo Chavez, Venezuela's transparency practices have deteriorated, even as certain areas have seen improvements. The government increasingly relies on its 'parallel' public sector, as exemplified in the creation of the non-accountable, non-transparent National Development Fund (financed by oil windfall revenues and the central bank) and the relatively recently created government Treasury Bank. At the private company level accountability is primarily towards shareholders. Although there are several accountability laws available, there are no indications that corporate governance is to enhance accountability to stakeholders thus this approach has been graded Weak (W).

Table 8.4 summarises the evidence about whether the implementation of corporate governance principles is to enhance companies' accountability towards stakeholders. From this table it is clear that corporate governance is not seen from an accountability perspective.

Table 8.4 Corporate governance: accountability to stakeholders

Country	Description	A
Bolivia	Adverse business culture that lacks transparency and accountability *(1)*	**W**
Colombia	Accountability discharged in annual reports – primarily to shareholders and governmental institutions	**M**
Ecuador	Accountability to owners primarily 'Comply or disclose' *(2)*	**W**
Peru	Accountability is primarily to shareholders and investors	**M**
Venezuela	Accountability toward stakeholders primarily. It is regulated in the commercial code, civil code, and 'Public Notary Registration Law'	**W**

Note: this table summarises the accountability approach in each Andean country
***A** Accountability to stakeholders*
***S** Strong; **M** Medium; **W** Weak*

(1) Overall, there is insufficient publicly available information directly addressing Bolivia's compliance with OECD's, CAF's or any principles of corporate governance; but the evidence suggests it is weak.
(2) Comply with the corporate governance standards or disclosed the reasons why a company took the decision not to follow (apply) certain rule or principle.

Some of the research participants recommend having large boards as they may provide a range of expertise to help make better decisions control a strong CEO. However, some prefer smaller boards of directors as they may be more effective than large ones, with greater participation by each board member, and more effective and efficient decision-making and greater individual accountability. This provides evidence to answer research question two, as boards of directors are requested to be more accountable.

In addition to the formal structure of a board, the findings support provisions for board committees, especially an audit committee. This is a recommendation for all companies irrespective if they are a large organisation, a state-owned enterprise, a small company, or a family business as any company needs to be transparent and accountable. There is no requirement in the corporate law of any of the Andean countries to elect board members to represent stakeholders. According to some regulators, in Colombia the Superintendence of Finances, for the proper performance of the board requires the establishment of specialised committees integrated by some of its members to facilitate detailed analysis of certain issues that due to their nature are of great importance for the company. These committees act as a filter and reinforce the objective analysis of the decisions that correspond to the board. An Independent Director mentioned that it is considered a good corporate governance practice to have the existence an audit committee incorporated by independent board members and a nominating and compensation committee. Thus, having board committees increases accountability, and provides evidence to answer research question two.

According to some interviewees, most companies with an audit committee have decided that this committee needs to have at least three board members and that all the members on the committee shall have a working familiarity with basic finance and accounting practices. One of the principal roles of the audit committee is oversight of the accounting of the organisation. Audit committees should also have the ability to engage outside advisers to assist them with their corporate governance responsibilities. The evidence gathered in this study helps to answer research questions two and three; audit committees facilitate the accountability and the next research question; the legitimacy of the board.

8.1.3 Implementing corporate governance to legitimate company activities

Evidence from both the interviews and the case study stress the importance that some cultural factors have over corporate governance practices in the Latin American Andean region; for example for many the way others perceive their actions or expect them to conduct themselves is very important. This is probably one of the reasons why it is important to show that the operations and actions of an organisation are legitimate and a way to demonstrate that legitimacy is through the adoption of corporate governance principles. This section provides the evidence gathered in order to answer research question three.

The findings suggest that, under a relatively unregulated environment, corporate management will react to community and stakeholder expectations by revealing personally sensitive information when their company is placed in a situation of higher stakeholder awareness and public scrutiny and when it is structured to meet the expectations of good corporate governance. Many companies have created so called corporate social responsibility (CSR) programmes that aim to balance their operations with the concerns of external stakeholders such as customers, unions, local communities and governments. Social and environmental consequences are weighed against economic gains as companies must be aware that sound corporate governance practices are important in order to be considered ethical and socially responsible businesses. This is one of the reasons the majority of participants argued that the corporate governance agenda and the ongoing corporate social responsibility arrangements are especially linked by the issue of ethics. Companies want the public to believe in the ethical organisation and at the same time do not want to provide new legal backing for tighter ethical behaviour.

An additional issue is the perception by company stakeholders on “whether the existence, activities and impact of an organisation on society are justifiable”. This is associated by some participants with corporate legitimacy of having valid socially acceptable and trustworthy authority. Measuring such legitimacy however is a more difficult matter. According to some participants, legitimacy is assumed to be influenced by disclosures of information and not simply by changes in corporate actions. However, there is no evidence to prove whether disclosures actually works in terms of changing the perceived legitimacy of an organisation. Some participants mentioned the procedures used by companies to earn their legitimacy such as conforming to demands, building reputation, and communicating honestly.

Individuals in the Andean region share different views about a mandatory or a voluntary approach. Several of the participants explained that there are rules that say what should be done, and if a company believes that it is not affected by a specific standard, for example management decides that due to the size of the company it should not subscribe to those rules, then they should explain why they are not applying them. It is for the potential investors or stakeholders to decide whether explanations are satisfactory. It is expected that companies should be transparent in explaining the reasons why certain principles do not apply to them.

It may be assumed that all social actors are seeking legitimacy, and/or reinventing legitimacy norms, within the corporate environment (North, 1990). In this study the cross-national forces are important which might explain the perceived legitimacy of corporate governance practice within a nation; and legitimacy must be taken as a condition reflecting cultural alignment, normative support, or consonance with relevant rules or laws (Scott, 2001).

The results show that in Bolivia, the introduction of changes in the way businesses are managed has led to the increase in the credibility of these organisations in the eyes of government policy makers, debt equity investors, existing and potential new clients, and other stakeholders. Thus, the thesis find that the implementation of corporate governance creates the conditions that meet stakeholders' interests and a corporate governance approach that seeks the legitimacy of a company's activities and is thus graded as Strong (S).

In Colombia the legitimacy of company activities approach is commonly used by state-owned enterprises which have been under financial difficulties. Officials from these entities or their constituencies believe that to continue in operation these organisations must present the firms as acting within the boundaries of the social contract, i.e. organisational legitimacy is the motivating force. As there is no evidence that this is the case for other non-state-owned enterprises, the corporate governance approach to legitimise company activities is graded Medium (M). Also, in Colombian, according to a company director, people get confused when told they must disclose information about their business, even if it is non-confidential information; individuals refuse to reveal even numbers that they are obliged to show to the government; they feel threatened if they have to show any sort of information to their suppliers, their customers or any other entity external to the company. Another executive director mentioned, however, there are some companies which have a culture of transparency, and the adoption of best practices is a legitimisation process.

In Ecuador, the government is currently negotiating free trade agreements with the US and the EC, and governmental organisations such as the Superintendence of Companies and the BVQ have been promoting the implementation of corporate governance principles with the argument that organisations might be in a better commercial position it they are able to show the deployment of management activities which are transparent and visible to engender greater organisational legitimacy. Moreover, according to some interviewees the companies that voluntarily have decided to implement the principles are doing so because they are convinced of the benefits of being transparent, trustworthy and ready to disclose all the necessary company information. For this reason Ecuadorian companies' approach to legitimacy has been graded strong (S).

In Peru, PROCAPITALES is CAF's counterpart promoting the implementation of corporate governance. As part of the contest used as one of the means to convince organisations to implement the principles, PROCAPITALES rewards companies that demonstrate a greater commitment to legitimacy on the basis of transparency and ethics. According to some participants there is also support for the adoption of CSR. This approach to legitimacy has been graded Strong (S)

In Venezuela, SMEs are progressively looking for strategic associations and are better prepared to disclose their financial information and are the subject of public scrutiny. According to this thesis, these companies see the implementation of corporate governance principles as an opportunity to line up the legitimacy of their operations with stakeholders' expectations. There is a different situation for family-owned business which, in the majority of cases, keep their equity interests restricted to a limited group of owners/shareholders, usually members of the same family. These companies have always been reluctant to implement corporate governance practices. Only recently after a process of awareness carried out by one of CAF's counterparts, family-owned business have started the implementation of the principles as transparency and reliability values are increasingly appreciated as adding to the company reputation. For Venezuelan SOEs the decision to implement governance practices is related to a specific public policy framework in which these organisations operate. Based on the above, the implementation of corporate governance to legitimise company activities have been graded Medium (M).

Table 8.5 shows a summary of the five countries' companies desires to legitimate their activities by implementing corporate governance standards.

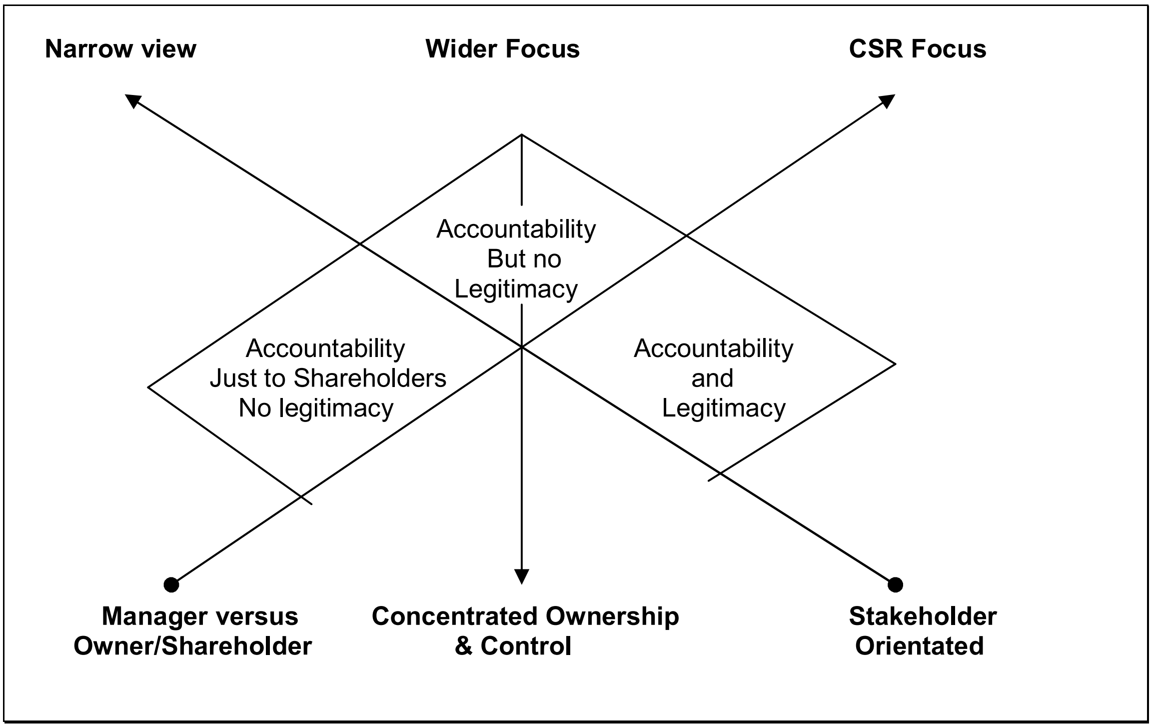
Table 8.5 Company approach to legitimacy of activities

Country	Description	L
Bolivia	Line up organisations' behaviour with the expectations of society (microcredit)	**S**
Colombia	SOEs – to justify their actions Voluntary disclosure 'if comply explain *(1)*	**M**
Ecuador	Improve transparency and strengthen management practices *(2)*	**S**
Peru	Companies that demonstrate a greater commitment to legitimacy on the basis of transparency and ethics are rewarded	**S**
Venezuela	Transparency culture regarding the disclosure of information (resistance to disclose)	**M**

Note: this table summarises the legitimacy approach in each Andean country
***L** Implementation to demonstrate Legitimacy of company activities*
***S** Strong; **M** Medium; **W** Weak*
(1) An explanation is requiring for those elements complied with, while recommendations for complied with do no warrant explain.
(2) The country is negotiating a Free Trade Agreement with the US – Requiring additional efforts by its business sector to improve management standards if competitiveness is affected, among other things by corporate performance.

Figure 8.3 outlines the evidence in answering the research questions, it also summarises the approaches given by the research participants to corporate governance in the five Andean countries.

Figure 8.3 Systems of Corporate Governance



Note: This figure summarises the corporate governance approaches expressed the research participants.

In summary, the legitimisation of corporate activities for adopting corporate governance is a more valid reason than for any accountability reason or engagement with stakeholder reasons. This legitimisation maybe a selfish motivation in companies appearing to be caring organisations, but in reality it seems that there is no real concern for stakeholders or any accountability.

8.2 Contribution to Knowledge

This thesis investigates developments in the implementation of corporate governance in the Andean region. The empirical findings described in this study contribute to a better understanding of the state of corporate governance in each of the five countries in the Andean region.

First, the study contributes to the limited body of Andean literature on corporate governance and of Bolivia, Colombia, Ecuador, Peru, and Venezuela in particular. The study added to the overall understanding of important issues such as stakeholders' engagement and accountability to broad stakeholders.

A broad consensus exists on the active role played by the financial sector in promoting economic growth and sustainable development and in particular the importance of efficient running of organisations; in this context the study makes several contributions. By investigating CAF and the perceptions of stakeholders regarding the importance, benefits and attitudes towards the implementation of corporate governance standards, this study will be of potential importance to policymakers, regulators, and promoters of good practices and help assist in deciding the areas in need of improvement and exposure of their meaning and benefits for stakeholders. In addition the timelines of this study, in terms of recent financial global turbulence, the Andean region political and economic changes, the constant debate over whether to have more regulated governance standards versus voluntary compliance, and attempts to harmonise accounting regulations, enhances the importance to regulators in the Andean countries and all those promoting the implementation of corporate governance standards in the region.

The thesis shows that the understanding of corporate governance is limited to very few stakeholders, and some cases some of those at higher levels of management do not have a clear idea of what corporate governance really means. This is also compounded by the fact that terms such as ‘corporate governance’, ‘accountability’, ‘stakeholder’, and ‘legitimacy’ do not have a clear translation into Spanish. The cultural background prevents the understanding of the need and benefits of disclosure, having independent members in board of directors, or even allows external investors in close hold capital organisations.

The study will also offer both local and foreign investors an objective analysis of the current implementation of corporate governance standards in the Andean region; such information is undoubtedly important to investors wanting to make informed financial decisions before investing in organisations located in the region. This need is likely to be highlighted by recent events in international credit markets. Such investment is paramount to the success in the regulatory framework of some of the Andean counties.

A popular committee among Andean companies, according to the case study is a corporate governance committee. This committee has among its functions: to help the board identify individuals qualified to become board members; develop and recommend to the board the corporate governance guidelines applicable to the company; lead the board in its annual performance review; recommend who will serve on each board committee; and serve as the primary committee overseeing company's compliance with established programs such as ethics, conduct and so on. This provides evidence to answer research questions two and three as, through these committees, companies in the region are expressing their desire to be accountable to their stakeholders and also to demonstrate the legitimacy of their operations.

An additional contribution to knowledge is that the corporate governance structure relies on the internal control system and risk management. Internal controls are there to protect the business; they can also increase the level of compliance with rules and regulations. According to this research an effective system of corporate governance should enable both compliance and performance to be achieved meeting the reasonable expectation of stakeholders. As found in the case study, those in charge of internal control systems are accountable for initiating, approving, processing and reviewing business transactions; they are also responsible for the validity, correctness and appropriateness of their actions. Managers are accountable for negative results attributable to their failure to maintain reasonable internal control activities. Also, in the absence of an internal audit function, management needs to apply other monitoring processes in order to assure itself, and the board, that the system of internal control is operating as intended. In these circumstances, the board will need to assess whether such processes provide sufficient and objective assurance.

8.3 Limitations of the Study

Although the thesis attempts to provide a fairly comprehensive and systematic examination of these issues, it is, nevertheless, incomplete, and remains subject to some limitations. First, the study is hampered by a lack of data covering some of the countries; the analysis has been restricted in its coverage to only a few companies, industries and sample period. For example only companies that took part in CAF's pilot study are examined. Data from listed companies could be used to explore a number of issues studied in this thesis in greater depth; these avenues for future research are detailed in section 8.4.

Second, cost and time constraints associated with the collection of data resulted in some limitations to this study. The research was completed solely by the author, and the cost refers to the funding needed to travel, accommodation and other expenses to be able to meet the participants in three of the five Andean countries. The research also coincided with the time a number of corporate governance issues were currently developing in the Andean region. While the findings provide important insights for regulators, investors, company managers, policy developers and other stakeholders, there was not enough time to investigate the effect of these new changes in great detail. Once again, though, further work in the area would be insightful.

Third, although the interviews were conducted with individuals from different sorts of companies and across all the countries, this research is limited by the small number of interviews carried out, also by the fact that those interviews were based in no more than two cities of each country. Therefore local issues may have influenced the findings of this study, making generalisations difficult to be made.

Fourth, dealing with foreign languages brings added difficulties of translation and interpretation which have implications for the research process. For example the concept of accountability is not a universal concept. In fact the term does not exist in Spanish, and it is replaced by a three word sentence *rendición de cuentas.* There are various forms of the term, “responsibility”, for example is used in lieu of the English accountability; “responsibility” is used in a way that reflects a duty or obligation, which is at least close in meaning to accountability. An additional difficulty is the difference in meaning of words from one country to the other. For example, in Colombia the term board of directors has a literal translation, *Junta Directiva*. However, in Ecuador, Peru and Bolivia, the term used for board of directors is Directory, in Spanish *Directorio*; in Colombia a *Directorio* is a Phone book.

8.4 Avenues for Further Research

Some areas for further research are evidence from the empirical work presented in this thesis. From the literature review on corporate governance, it is clear that the Andean region is under-researched. Thus, the research agenda is large and includes, but is not limited to, the quality of internal and external monitoring, the effectiveness of boards, the transparency of financial statements, stakeholder activism, ownership and control and the development of institutional regulatory capacity to meet rapid change and progress in organisations in the Andean region. Future work needs to examine the issues addressed in this thesis using a more comprehensive set of data which incorporates: (i) corporate governance structures; (ii) board of directors' composition; (iii) board committees; (iv) remuneration policies; (v) internal controls and risk management; (vi) potential benefits companies in the Andean region will get from the implementation of the principles.

Other issues of growing interest are the adoption of social responsible practices. Research could be undertaken to look at CSR issues and their interrelation with corporate governance issues.

Research could take advantage of the attitude towards the adoption of corporate governance principles not just in the Andean region, but through all Latin America, using the willingness of individuals to talk freely about the issues, and the interest show from some international organisations on funding corporate governance activities in Latin America; it may be helpful to carry out studies comparing the implementation of corporate governance in the Andean region with similar activities in other South American geographical regions.

Knowing the cultural and legal characteristics of the Andean countries and the involvement of the private sector on corporate governance development, research could be addressed to find out how can enforcement be improved in weak environments, how can a better environment be engineered? More generally, what factors determine the degree to which the private sector can solve enforcement problems on it own, and what determines the need for public sector involvement in enforcement?

This research has had a glance into some matters related to privatisation; however, comprehensive research may be undertaken looking at issues such as: corporate governance issues in cooperatively owned firms; the interaction of privatisation and corporate governance frameworks; specific forms of privatisation that might be more attractive in weak corporate governance settings; and the relationships between corporate governance changes and changes in the degree of state-ownership of commercial enterprises.

Considering the predominance of family-owned firms in the region, there are issues that can be looked at such as: liquidity and transition to a more widely held organisation; also internal control management, such as intra-familial disagreement, disputes about succession, and exploitation of family members. Where family-owned firms dominate, as in many emerging markets, they raise system wide corporate governance issues. Also as there are successful family owned or controlled businesses in the Andean region a more in-depth empirical study on the merits and demerits of family ownership structure is warranted. If so, how corporate governance may evolve in these companies and what can be done to better align the interest of controlling family ownership and other stakeholders?

Most of the corporate governance research has been directed at listed firms. However, very few empirical studies have been focused to document specific channels through which improved corporate governance can help the poor. This is an important area of research, considering much of the job creation in developing countries and emerging markets comes from small and medium-sized enterprises. These require different approaches, which so far have not been researched very much.

Political interference in organisations decision-making is a constant in some of the Andean countries. This may be detrimental to corporate performance. Therefore an important part of the research is to examine how political interference affects corporate performance of state-owned enterprises compared with the performance of non-state-owned enterprises.

Finally, more can be done to know about the dynamic aspects of institutional change, whether change occurs in a more evolutionary way during normal times or more abruptly during times of financial or political crises.

In this context, it is important to mention that enhancing corporate governance will remain very much a local effort. Country-specific circumstances, cultural and local features mean that findings do not necessarily apply directly to each and every country and situation. Local data need to be used to make a convincing case for change. Local capacity is needed to identify the relevant issues and make use of political opportunities for legal and regulatory reform. As such the progress with corporate governance reform depends upon local capacity, in terms of data, people, and other resources.

8.5 Concluding Comments

Corporate governance has become a necessary tool for improving corporate performance and advancing the development of market-oriented democracies. Governance practices preserve the integrity of business transactions and in doing so strengthen the rule of law and democratic governance. This study has provided a framework for examining the implementation of corporate governance principles in the Andean countries. After thorough analysis and discussion of the findings in the light of the literature, methods and theories chosen it was possible to conclude about the reasons why Andean companies decide to implement corporate governance.

Currently, the Andean business community is accepting corporate governance as an important part of its operations. As companies realise that they can benefit from the implementation of the principles, and as the organisations that support the implementation of the standards are solidly in place, corporate governance is becoming institutionalised, as part of the Andean countries' economic and political structure. Supporters of corporate governance in the region such as CAF, CIPE, IFC, World Bank and others are constantly organising meetings and bringing together financial market regulators, stock exchanges, business leaders, and pension fund managers to focus on corporate governance through enforcement, effective boards of directors, transparency and responsibility, rule of law and disclosure. Those attending the meetings share lessons learned and exchange successful strategies for further efforts to advance corporate governance across the region, as these promoters remain committed to improving company's corporate governance.

It is possible to conclude that legal reforms may be necessary; that there is no particular governance system that is necessarily the best for all countries and that these systems have to be analysed in light of each country's history and development. Also, institutional investors may play an important role in Andean region corporate governance, particularly ADR holders and pension funds. An effective regulatory and legal framework is indispensable for the proper and sustainable growth of a company. In a rapidly changing national business environment, it has become necessary that regulation of organisations is in tune with emerging economic trends, encourage corporate governance and enable the protection of the interests of stakeholders.

At the same time the corporate governance frameworks in the Andean countries' are based on statutory law and regulations; voluntary standard contracts and self-regulation; and implicit rules, social norms and business culture. Similarly, applicable voluntary standard contracts and self-regulation are more than those covering stock exchanges, public trading and accounting standards. In addition, there is no particular governance system that is necessarily the best for all countries. Therefore, the challenge has been to find the best combination of rules, regulations and laws that best suit the countries' current and future comparative advantages. There is a need to analyse the results in the light of each country's history and development. Similarly, institutional investors are playing an important role in corporate governance; particularly, mutual and pension funds in countries which have implemented pension reform such as Colombia and Peru.

A stakeholder approach acknowledges the intertwined nature of economic, political, social and ethical issues. Centred in the management, it provides the manager with a pragmatic framework for action. The stakeholder focus varies by stakeholder group and also varies by country. The participants were largely circumspect about the degree to which stakeholders will be addressed at the governance level. However, there is some agreement across countries that shareholders are not just another stakeholder group; they also receive preeminent status as the owners of the business. Only the participants from Bolivia are sympathetic with the idea that organisations should engage with all stakeholders in addition to those of shareholders. Among the five countries, the Colombian and the Peruvian participants are less sympathetic with the idea of stakeholder engagement and The Ecuadorian and the Venezuelans are even less sympathetic with stakeholder perspective.

In relation to the second approach: implementation of corporate governance to enhance company's accountability to stakeholders. It is possible to say that accountability is weak in all the countries. Participants in three of the countries did not show much interest for it and the participants in the two remaining countries only showed some concern about the issue. The interesting case among the participants in the five countries is Bolivia, where despite being sympathetic with stakeholder engagement there is a known lack of accountability in the country.

In relation to the third approach, some differences were noted as well in the perception among the participants in the five countries about the decision to implement governance principles to legitimise their activities to stakeholders. However legitimacy can be taken as more of a reason that companies adopts corporate governance. Participants in Bolivia and Ecuador think this is most plausible. The participants in the three remaining countries (Colombia, Peru and Venezuela) to some extent agree with the view that companies implement good practices in order to legitimise their activities to stakeholders.

Summing up the findings reveal that in the view of the participants most Andean organisations disregard all those who affect, or affected by, a company's actions and the interests of all stakeholders are not taken in to account. In addition there is not a widespread view that companies should be accountable to stakeholders beyond the company owners or shareholders. However, all those activities that generate a good 'reputation' for an organisation are important. This 'reputation' is no more than the overall estimation in which an organisation is held by its constituents, customers, investors, employees, and the general public.

The foundation of corporate governance varies according to the policy approaches aimed to improve the effectiveness of corporate governance by regulating managerial power (Davis, 2005). Much of the policy prescriptions protected in codes of 'good' corporate governance rely on universal notions of 'best practice', which often need to be adapted to the local context of organisations or 'translated' across diverse national institutional settings (Ahmadjian and Robbins, 2005). By contrast, within the field of corporate governance, stakeholder theory (Freeman, 1984) comes closer to an 'open system' approach by recognising that the effectiveness of corporate governance depends on a wider set of company-related actors. Stakeholder theory shifts attention from efficiency arguments toward a broader understanding of effectiveness in terms of goal attainment in relation to the multiple objectives of different constituencies. Equally, it is important to look at the accountability owed to parties beyond the shareholders or owners of a company; also to the efforts to legitimate the activities of an organisation. Surprisingly, very little corporate governance research has been built on the large and robust body of theories that examine the alignment between organisations and their broad environment. This research has closed this theoretical gap.

A theoretical framework integrated by stakeholder, accountability and legitimacy theories was created to approach the interdependencies of corporate governance practices within diverse technical, managerial, and institutional environments. The conceptual framework used suggests that the corporate governance issues outlined by the stakeholder, accountability and legitimacy theories must be challenged to better capture the variations in corporate governance from interdependencies between organisations and their environments.

The evidence from this study confirms that legitimacy is not enhanced by clear lines of accountability to a wide number of stakeholders. In an environment such as of the Andean region, there is a narrow stakeholder approach and week accountability, the current approach to organisational legitimacy can be used to achieve a meaningful stakeholder engagement. A way to make the policy process more dynamic is by supporting stakeholder engagement and accountability. By taking into account the views of wider stakeholder groups and providing these with relevant information, these groups will become empowered and will be able to hold organisations accountable for their actions. Additionally, policy-makers may take advantage of the importance given to legitimacy in the process of adopting corporate governance standards, as this legitimacy appears to be derived from the relationship with different groups of stakeholders and from the integrity of the decision-making process belonging to any corporate governance system.

Further, if accountability is devised as a way of creating trust in the governance of institutions, there is the possibility to promote accountability as a means of strengthening relations between organisations, delineating responsibilities, controlling power, and ultimately enhancing legitimacy. As recommended by Fischer (2004) the above proposition will tie together a wider stakeholder approach, accountability, legitimacy and regulation in an unbreakable manner.

Finally it is possible to say that there is general agreement that the adoption of corporate governance principles may enable organisations, whether private, publicly traded, or state-owned, to understand their rights and obligations better. However, the implementation of good practices will not work if the necessary laws and regulatory instruments do not apply in a consistent culture of enforcement and compliance that is also credible and well understood, both internally and across borders.

Despite the rather strong results, the conclusions must be interpreted with care. These results may be tested with other measures of corporate governance practices within and between national contexts. Nonetheless, this study offers powerful new insights into the comparative corporate governance literature and also offers important policy implications for public officials.

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APPENDICES

Appendix 1.1

Código Andino Gobierno Corporativo - CAGC

rante el último tiempo, a nivel mundial y latinoamericano, se vienen debatiendo sobre temas de Buen Gobierno Corporativo. La importancia de la administración y gestión de las empresas debe asentarse en principios de transparencia, responsabilidad, eficiencia y protección de los interés de los accionistas; al respecto se han elaborado en los últimos años, códigos y medidas de buen gobierno. Es por esta razón, que en esta edición de la hoja bursátil les brindamos un resumen sobre el tema y sobre los lineamientos que se proponen para la región andina.

¿Qué es Gobierno Corporativo?

Se puede definir al Gobierno Corporativo como un sistema un sistema mediante el cual as compañías son dirigidas y controladas. En otras palabras, es un conjunto de principios y normas sistemáticamente ordenadas, referidas a la dirección interna de las sociedades. Este conjunto de normas, abarca desde la protección a los derechos de los accionistas minoritarios, hasta las prácticas y deberes de los directores, incluyendo la fiscalización externa por parte de entidades ajenas a la sociedad.

Lineamientos para un Código Andino de Gobierno Corporativo

Consciente de la importancia de promover las mejores prácticas de gobierno corporativo en la región, la Corporación Andina de Fomento (CAF) contrató una firma española para elaborar lineamientos de gobierno corporativo. El objetivo de estos lineamientos es brindar, a un amplio espectro de empresarios de la región, una guía que les permita incorporar buenas prácticas en esta materia.

Las 51 medidas contenidas en los lineamientos para un Código Andino de Gobierno Corporativo (LCAGC) abordan las siguientes materias:

(1) Derechos y trato equitativo de los accionistas
(2) La Asamblea General de Accionistas
(3) El Directorio
(4) La información financiera y no financiera
(5) La resolución de controversias

A continuación se enumeran las 51 medidas:

1. Derechos y trato equitativo de los Accionistas

1. Los Estatutos Sociales recogerán el principio de una acción un voto, salvo las acciones privilegiadas sin voto.
2. En operaciones que puedan afectar negativamente a los derechos de los accionistas minoritarios, como ampliaciones de capital, fusiones o escisiones, la propuesta de los administradores deberá estar necesariamente respaldada por informe de un auditor externo, designado por los directores independientes distinto del propio de la compañía.
3. Las sociedades tendrán que implementar mecanismos permanentes de comunicación con los inversores y accionistas, a través de los cuales éstos puedan requerir información, salvo la confidencial o irrelevante, plantear cuestiones de interés corporativo o asociadas a su condición de accionistas, más allá de la información a proveer con ocasión de la Asamblea General de Accionistas, y cuya respuesta será difundida al mercado, no privilegiando al accionista solicitante respecto a los demás.
4. Las grandes compañías y las empresas listadas con amplia difusión de su accionariado, con al menos 500 accionistas, deberán contar con una página Web corporativa, que actúe como mecanismo de participación e información con los accionistas y los mercados.
5. Las sociedades deben garantizar el derecho de todos los accionistas a conocer los quórum para la constitución de la Asamblea General de Accionistas, el régimen de adopción de acuerdos sociales y la posible exigencia de quórum reforzado para aquéllas operaciones que afecten de manera significativa a los derechos de los minoritarios, así como las limitaciones al derecho de asistencia.
6. Los estatutos de la sociedad no cotizada en Bolsa, deberán prever el derecho de coventa de los accionistas minoritarios en el caso de operaciones que supongan el cambio de control de la sociedad.

2. La Asamblea General de Accionistas

7. Los estatutos de las sociedades deben reconocer a la Asamblea General de Accionistas su condición de órgano supremo, definiendo con claridad sus funciones exclusivas, entre las que no se pueden omitir, el nombramiento de los auditores o la probación de la política de retribución de los directores.
8. Las grandes compañías, las empresas listadas y las anónimas y abiertas con una gran base accionarial, deberán tener un Reglamento de Régimen Interno de Organización y Funcionamiento de la Asamblea General de Accionistas, de carácter vinculante, y cuya transgresión acarree responsabilidad.
9. Las sociedades determinarán estatutariamente el derecho de los accionistas que representen una participación significativa del capital social, a promover la convocatoria de una Asamblea General de Accionistas, que deberá celebrarse en un plazo razonable y respetando íntegramente la agenda propuesta por los promotores.
10. Los estatutos fijarán el plazo, los medios de

convocatoria, el contenido mínimo del anuncio, y el detalle de los puntos contenidos en la agenda, de modo que se facilite al máximo la asistencia del mayor número de accionistas y la comprensión de todos los asuntos contenidos en la agenda, evitando menciones genéricas.
11. La compañía debe establecer los medios para facilitar el ejercicio del derecho de información de todos los accionistas con carácter previo a la celebración de la Asamblea y durante el desarrollo de la misma, teniendo siempre en consideración que la información debe ser completa, correcta y transmitida a todos los accionistas por igual y con tiempo suficiente para su análisis.
12. Las sociedades que deban mantener página Web promoverán y ofrecerán a los inversores institucionales y a los accionistas con una participación significativa la posibilidad de hacer pública su política de participación en la Asamblea General de Accionistas así como el sentido de su voto en relación con cada uno de los puntos de la agenda.
13. Las sociedades, a través de los Estatutos y/o el reglamento de la Asamblea, implementarán los procedimientos necesarios para promover la participación activa de los accionistas en la Asamblea General.
14. Se fomentará la utilización de medios electrónicos, tanto para la convocatoria de las asambleas como para la emisión del voto a distancia de los accionistas sobre los puntos de la agenda.
15. El Directorio establecerá mecanismos necesarios para computar como presentes a los accionistas que emitan su voto a distancia.
16. Las sociedades promoverán mecanismos transparentes de delegación del voto, admitiendo la agrupación de los minoritarios, y expresamente prohibirán la delegación de voto a favor del Directorio, sus miembros, y miembros de la alta dirección.
17. Las sociedades promoverán que las delegaciones de voto incluyan la agenda de la Asamblea General de Accionistas y el sentido del voto para cada propuesta, y prohibirá las delegaciones del voto en blanco.
18. Se fomentará y facilitará la asistencia a la Asamblea General de Accionistas de todos aquellos ejecutivos o asesores externos que con su presencia y explicaciones a los accionistas contribuyan a facilitar la comprensión y clarificación de los temas a tratar.

3. El Directorio

19. Las sociedades, cualquiera que fuera su tipo societario, deberán tener un Directorio con un número de miembros que sea suficiente para el adecuado desempeño de sus funciones.
20. Los estatutos deberán fijar las funciones de supervisión, evaluación y estrategia del Directorio, que serán indelegables.
21. El Directorio deberá velar por la integridad de los sistemas de contabilidad, el establecimiento de sistemas de control de riesgos y, en particular, las operaciones *off-Shore*.
22. Las sociedades deberán contar con un Reglamento de Régimen Interno de Organización y Funcionamiento del Directorio, de carácter vinculante para sus miembros y cuya transgresión acarree su responsabilidad.
23. Los estatutos determinarán el número mínimo y máximo de miembros del Directorio que permita una eficaz administración y gobierno de la compañía, y la participación activa de los directores que representen a los accionistas significativos (directores externos no independientes).
24. El Directorio podrá estar integrado por directores internos y externos, que podrán ser independientes o no independientes.
En el nombramiento de los directores se tratará de reflejar al máximo la estructura accionarial de la sociedad. El Directorio podrá estar formado en su totalidad por directores externos, que en todo caso serán siempre una amplia mayoría.
25. Los directores deberán elegirse por un procedimiento formal y transparente, definido por el Reglamento de Régimen Interno de Organización y Funcionamiento del Directorio, correspondiendo a la Comisión de Nombramientos y Retribuciones la propuesta inicial de los candidatos.
26. La sociedad únicamente podrá designar como directores independientes a aquellas personas que cumplan con los requisitos de trayectoria profesional, honorabilidad, y absoluta desvinculación con la compañía o su personal, y promoverá su carácter independiente mediante declaración pública suscrita tanto por el propio director designado como por el Directorio en relación a su independencia. [Pág. 48 - Epígrafe
27. Los Estatutos fijarán las causales por las que se pueda cesar a los directores así como su obligación de dimitir inmediatamente cuando dejaran de cumplir las condiciones para su designación o puedan causar un daño al prestigio o buen nombre de la compañía.
28. El alcance de los deberes de fidelidad, lealtad, no competencia y secreto quedarán recogidos en los estatutos sociales.
29. Los directores tendrán que declarar todas las relaciones, directas o indirectas, que mantengan entre ellos, con la sociedad, con proveedores, clientes o cualquier otro grupo de interés de las que pudieran derivarse situaciones de conflicto de interés o influir en la dirección de su opinión o voto.
30. Los estatutos de la sociedad deberán prever el manejo de las situaciones de conflicto de interés incluyendo la obligación de los directores afectados de ausentarse o inhibirse en las deliberaciones y en las votaciones sobre este tipo de situaciones u operaciones asociadas a estas.
31. Se reconocerá expresamente el derecho del director a recibir con antelación suficiente la información concreta de los asuntos a tratar en las reuniones del Directorio, así como la posibilidad de recurrir al posible auxilio de expertos externos o internos.

32. Los estatutos recogerán las reglas para la fijación y transparencia de la retribución de los directores. La Asamblea General de Accionistas fijará la política de retribución, siempre previa propuesta razonada del Directorio, que, como norma general, deberá contemplar mecanismos mixtos, vinculando una parte de la retribución a componentes variables en función del desempeño empresarial. La Comisión de Nombramientos y Retribuciones fijará la retribución concreta de cada director.
33. La retribución de los directores será transparente. El informe anual de gobierno corporativo incluirá la información de la remuneración por todos los conceptos percibida por el conjunto de los directores.
34. No podrá existir ningún otro tipo de retribución distinta de la publicada en el informe anual de gobierno corporativo, sin que pueda darse ninguna otra retribución adicional o encubierta, ni asunción de gastos, ni prestaciones en especie no contemplada en el mismo.
35. El Presidente del Directorio y, en su caso, el Vicepresidente deberán ser elegidos de entre los miembros externos del Directorio y sus funciones y responsabilidades estarán fijadas con detalle en los Estatutos Sociales y el Reglamento de Régimen Interno de Organización y Funcionamiento del Directorio.
36. El Presidente del Directorio no podrá tener voto dirimente, salvo que excepcionalmente fuera imprescindible para formar la mayoría en caso de cese de los directores, siempre y cuando no existan directores suplentes.
37. El Directorio deberá nombrar un secretario que velará por la legalidad formal, material y estatutaria de las actuaciones del Directorio y la observancia de los principios de buen gobierno.
38. Los estatutos fijarán las funciones y competencias del ejecutivo principal, que podrá ser director, y en todo caso, estará sujeto a su mismo régimen de responsabilidad.
39. El Directorio deberá ser convocado periódicamente y siempre que lo requieran los intereses de la sociedad a instancia del presidente, del vicepresidente, o de más de un director.
40. El Directorio conformará en su seno comisiones para ejercer ciertas funciones y en particular, la de auditoria y la de nombramientos y retribuciones, constituidas exclusivamente por directores externos.
41. Las operaciones con partes vinculadas deberán ser autorizadas por el Directorio, con informe y propuesta de la Comisión de Nombramientos y Retribuciones, con una mayoría cualificada de, al menos, las tres cuartas partes de los miembros del Directorio y deberán ser publicitadas.
42. El Directorio deberá evaluar con una periodicidad al menos anual el cumplimiento por su presidente, vicepresidente, secretario y las comisiones delegadas que se hayan constituido, de sus funciones y las medidas reconocidas en este Código así como otras recomendaciones que puedan adoptarse de gobierno corporativo.

4. Información financiera y no financiera

43. El Directorio deberá formular los estados financieros mediante la adecuada utilización de los principios contables contenidos en las normas internacionales de contabilidad, de manera tal que no haya lugar a salvedades por parte del auditor y que los riesgos asumidos por la compañía queden totalmente identificados sobre la base de criterios de prudencia.
44. La Asamblea General de Accionistas nombrará al auditor externo independiente a propuesta del Directorio, previa recomendación del Comité de Auditoría, que no podrá proponer auditores que hayan sido objeto de inhabilitación o cualquier otro tipo de sanción.
45. La sociedad no podrá contratar con su auditor, o personas o entidades a él vinculadas, servicios distintos al de auditoria.
46. En el caso de grupos consolidables, el auditor externo deberá ser el mismo para todo el grupo incluidas las filiales *off Shore*.
47. Los Estatutos Sociales fijarán un periodo inicial y el número de prórrogas para la contratación del auditor, que no podrá exceder de seis años, plazo a partir del cual será obligatorio rotar a la firma auditora. [Pág. 56 a]
48. El Directorio informará a la Asamblea del porcentaje que supone la remuneración abonada por la sociedad al auditor externo respecto a la facturación total de éste.
49. Los pactos entre accionistas de sociedades cotizadas, que afecten a la libre transmisibilidad de las acciones o al derecho de voto en las asambleas, habrán de ser comunicados con carácter inmediato a la propia sociedad y al mercado.
50. Anualmente, el Directorio deberá aprobar y publicar un informe de gobierno corporativo que deberá incluir el grado de cumplimiento de estas medidas, así como el detalle de la información corporativa y la información sobre las partes vinculadas y conflictos de interés.

5. Resolución de Controversias

51. Los Estatutos incluirán una cláusula compromisoria que establezca que cualquier disputa, salvo aquellas reservadas legalmente a la justicia ordinaria, entre accionistas relativa a la sociedad, entre accionistas y el Directorio, la impugnación de acuerdos de la Asamblea y el Directorio, y la exigencia de responsabilidad a los directores deberán someterse a un arbitraje ante una institución local independiente.

Appendix 2.1

CÓDIGO DE MEJORES PRÁCTICAS CORPORATIVAS

'*Código País*' – Country Code

Colombia

Committee members:

ANDI (Asociación Nacional de Industiales)
Asobancaria
Asofiduciarias
Asofondos
Bolsa de Valores de Colombia (BVC)
Confecámars
Fasecolda
Superintencia financiera de Colombia

2007

The Superintendence of Finances identifies the new Country Code as a common effort as is objective is gather public and private sector actors in the same group in order to get to a unified code with the consensus of everyone. The Country code was conceived as a document that gathers all previous voluntary recommendations accorder by consensus and therefore it is intended to not only to unify the different standards of the market in this subject, but to elevated them in order to eliminate asymmetries created by past regulation that only made obligatory these measures to companies wanting to receive investments from institutional investors.

The model chosen was "comply or explain" with some particularities. The Country Code practices are voluntary adopted by the securities issuers, who shall report periodically their level of adhesion to these measures. In case of not complying whit any practice, the issuer can report its reasons. Three elements require special attention on the new system:

- The code practices are completely voluntary. This means that every issuer can adopt its own model of corporate governance using or not the practices proposed.
- The Superintendence of Finances created a compulsory mechanism to report annually the level of adoption of these practices. The objective is having more information regarding the issuer's governance and more important unified governance reports.
- Finally, "explaining" is also voluntary. There is no obligation to report issuers' reasons to not comply with any of the practices. However the disclosing requirement is supposed to create a strong incentive to improve corporate governance practices within Colombian issuers.

The code is organised in four chapters and includes forty-one practices. The code is mainly based on practices included in the Andean Corporate governance Code issued by CAF in 2006. Special consideration was also given to other national codes, the OECD White Paper on Corporate Governance in Latin America as well as country experiences of Mexico, Peru, Spain and UK.

The chapters of the new Country Code are:

I. Shareholders meetings

This is a company steering organism conformed by the holders and/or proxies of subscribed equity shares, pursuant to the provisions established by current legislation and Company's Social By-Laws. The company statutes or bylaws of Colombian organisations are to include provisions for mechanisms designed to ensure the rights and fair treatment of shareholders/owners at regular or special meetings of their top governing body. At a minimum company statutes or bylaws are to address specific issues such as: notice of meetings, agenda, representation and voting mechanisms, and qualified majorities.

II. Board of directors

The board of directors is the supreme company's steering organism and acts on behalf of shareholders seeking the company's sustainability and business growth. The board members must act in corporate faith and with enough information to exercise its own rights and obligations. Directors should also avoid incurring in situations that could lead to conflicts of interest, they commit to handled with prudence confidential information to which they have access in course of normal of normal business for internal purposes only, and promote the best treatment and attention to shareholders and other stakeholders.

The board of directors of Colombian firms should be structured in such a way as to ensure that they have the proper capabilities and experience and independent decision-making authority. They should have an odd number of members and include at least one outside and/or independent director.

Members of the board of directors must have knowledge and experience about the activities inherent to the Company's business objectives, an/or knowledge and experience in the field of the industry, commercial, financial, stock exchange, and management, legal or related sciences. They also need to have a corporate standing and recognition for their professional suitability and moral integrity. A board member cannot be a member of more than five (5) different and simultaneous boards of directors.

To address their responsibilities directly, is recommended that board of directors must have a number of permanent committees to establish guidelines and to follow-up specific actions, assesses results and submit proposals for the improvement of the management of the different aspects under their responsibility. These committees are integrated by members of the board of directors designated by the board itself. For its functioning, besides relying on applicable current provisions, the committees have their own internal regulations establishing their objectives, functions and responsibilities. Common board committees are:

Audit committee: is the supreme control body of a company in charge of overseen and controlling the effectiveness of the Internal Control System. Is preferable that all the committee members must be independent and have knowledge of issues related to their function and at least one of them must be an expert in financial and accounting issues.

Nomination and compensation committee: the main purpose of this committee is to revise and make recommendations to the board of directors about the compensation system and selection criteria for the company's key employees and high executive or directors. At least one (1) of the committee members must be independent.

Corporate governance committee: this is a management support organism for the board of directors in respect to its performance for the corporate government of an organisation. Its purpose is to make recommendations to the board of directors about systems for the adoption, follow-up and improvement of practices for the corporate governance of the company. At least one (1) of the committee members must be an independent.

Another popular committee among Colombian companies is a *Business committee*: this is a consulting and advisory body for the board of directors in respect to the way they manage study and approve new business. At least one (1) of the committee members must be an independent member.

III. Disclosure of Financial and non-financial information

Disclosure of financial and non-financial information is the main mechanism companies have to approach stakeholders and the market as a whole. The aim of providing

Information is to enable a proper understanding by such groups on the running and situation of the company and allow them to have sufficient evidence for making informed decisions. The measures contained in this chapter are applicable to information different to these that shareholders have the right to request exercising their right of inspection.

IV. Mechanisms to resolve conflicts within corporate actors

Companies are to establish effective mechanisms to help prevent and to facilitate the handling and disclosure of any eventual conflicts of interest between shareholders, executives, interest groups and members of the Board of Directors.

Company executives, members of the Board of Directors and employees are to be barred from engaging in conflicting practices. At the same time they are to disclose any conflicts of interest they may be experiencing and to refrain from voting either for or against the matter in question.

With these mechanism companies seek to solve speedily, economically and in a specialised fashion all controversies derived from relationships between: the company and its stakeholders, among employees and between them and the company key executives, among shareholders and generally to solve controversies derived from corporate government.

Appendix 2.2

PRINCIPLES OF GOOD CORPORATE GOVERNANCE FOR PERUVIAN COMPANIES

Conformation of the Committee

Chairmanship:	National Supervisory Commission of Companies and Securities (CONASEV)
Members:	Ministry of Economy and Finance (MEF)
	Superintendence of Banking and insurance (SBS)
	Lima Stock Exchange (BVL)
	Association of Banks (ASBANC)
	National Confederation of Private Business Institutions (CONFIEP)
	Association of Capital Market Promoting Companies (PROCAPITALES)
	Centre of Studies on Capital and Financial Markets (MC&F)

Introduction

Corporate governance explains the rules and procedures for taking decisions in matters such as the equal treatment of shareholders, the handling of conflicts of interest, capital structure, remuneration schemes and administrative incentives, the acquisition of control, the disclosure of information, the influence of institutional investors, among others, that affect the process through which company income is distributed.

Peru is not unaware of the progress and discussions carried out regarding good corporate governance of companies. Over the years, the control framework has been adapting to these tendencies, concentrating efforts in achieving that Peruvian companies succeed to reach international standards and are able to offer more confidence to domestic and foreign investors, in particular minority shareholders.

With this in mind, a high level committee was formed, with the participation of the public and private sectors, to establish good corporate governance principles applicable to Peruvian companies. For this, the Principles of the Organisation for Economic Cooperation and Development (OECD), approved in April 1999, were considered. Given that the said Principles enjoy worldwide recognition, having been considered as a point of reference in the preparation of reforms and recommendations applicable to various company structures at the international level, it was considered to maintain as far as possible, its structure and content. Nevertheless, certain changes have been made, taking into account the characteristics of Peruvian companies, their shareholding structure and the legal framework in which they are developed.

These "Principles of Good Governance for Peruvian Companies" should be considered as a company guide, in such a way that their implementation evidences a clear capacity for self-determination and self-control, thus promoting the development of a culture of good corporate governance practices. Furthermore, they will act as a frame of reference by which the various interest groups can measure the degree of adherence of Peruvian companies to such principles.

Corporate Governance Principles

I. Shareholders' Rights

The Corporate governance framework should protect shareholders' rights.

Basic shareholder rights include the right to: (1) secure methods of ownership registration; (2) convey or transfer shares; (3) obtain relevant information on the corporation on timely and regular basis; (4) participate and vote in general shareholder meetings; (5) elect members of the board; and (6) share in the profits of the corporation.

II. Equal Treatment of Shareholders

The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redness for violation of their rights.

All shareholders of the same class should be treated equally. (i) Within any class, all shareholders should have the same voting rights. All investors should be able to obtain information about the voting rights attached to all classes of shares before they purchase. Any change in voting rights should be subject to shareholders vote. (ii) Votes should be cast by custodians or nominees in a manner agreed upon with the share's beneficial owner. Trading based on privileged information is prohibited. Related-party transactions should also be immediately disclosed as "material events".

III. Role of Stakeholders in Corporate Governance

The corporate governance framework should recognise the rights of stakeholders as established by law and encourage active cooperation between corporations and stakeholders in creating wealth, jobs, and sustainability of financially sound enterprises.

(a) The corporate governance framework should ensure that the rights of stakeholders that are protected by law are respected, such as workers, suppliers, and creditors. (b) Where stakeholders' interests are protected by law, stakeholders should have the opportunity to obtain effective redness for violation of their rights. (c) The corporate governance framework should permit performance-enhancing mechanisms for stakeholder participation. (d) Where stakeholders participate in the corporate governance process, they should have access to relevant information.

IV. Disclosure and Transparency

The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership and governance of the company.

Disclosure should include, but not be limited to, material information on: (1) The financial and operating result of the company. (2) Company objectives. (3) Major share ownership and voting rights. (4) Members of the board and key executives, and their remuneration. (5) Material foreseeable risk factors. (6) Material issues regarding employees and other stakeholders. (7) Governance structures and policies. (8) Important facts related to the issuing company, the value and offer which is being made. (9) Economic groups.

Material information includes that which could influence economic decisions taken by those who used it. Information should be prepared, audited and disclosed in accordance with high quality standards of accounting and auditing, including a description of the financial and non-financial risks confronting the company.

V. Responsibilities of the Board of Directors

The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.

Peru has a single board structure with a minimum size of three directors. The law includes the concept of regular and “substitute” director. Directors are expected to perform their duties carefully and loyally. They are bound to confidentiality. Each director has the right to be informed of all relevant information, in order to act wit full knowledge.

(a) Board members should act, in good faith, with due diligence, care and confidentiality, in the best interest of the company and the shareholders, on a fully informed basis. (b) Where board decisions may affect different shareholders groups differently, the Board should treat all shareholders fairly. (c) The board of directors should take into account the interest of stakeholders, always ensuring compliance with applicable law. (d) The board of directors should fulfil certain key functions.

Appendix 3.1

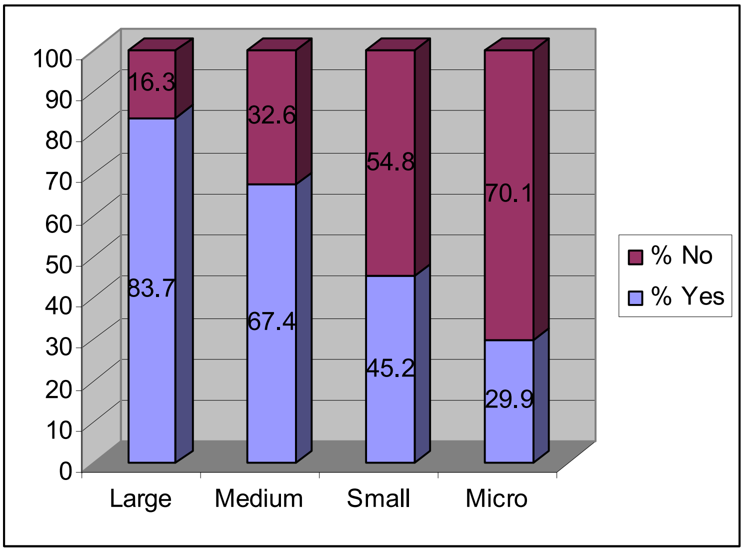
Summary of evidence taken from Corporate Governance Practices in Colombia: Survey by the Superintendence of Companies, 2008

Table 3.1 Companies that answered the survey

Size of the company	No.	%
Large	1.396	18.8
Medium	2.838	138.3
Small	2.807	37.9
Micro	291	3.9
Did not answer	82	1.1
Total		100.0

This table presents the number of companies which answered the survey grouped by company size.

Figure 3.1 Companies with a board of directors by size



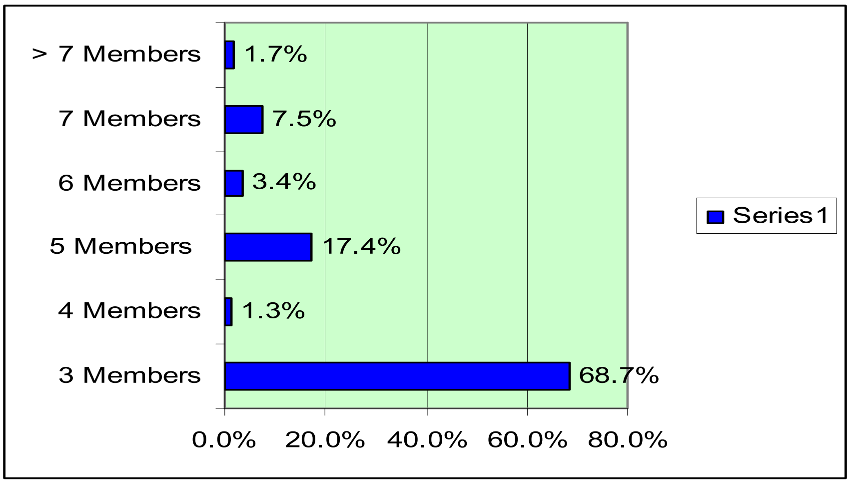
This figure shows the companies which said the have a board of directors distributed by the size of the company.

Table 3.2 Board of Directors Composition

Class of Member	%	Average No of Members
Executive Directors	70.5	3
External Dependent Directors	37.4	1
External Independent Directors	58.0	2

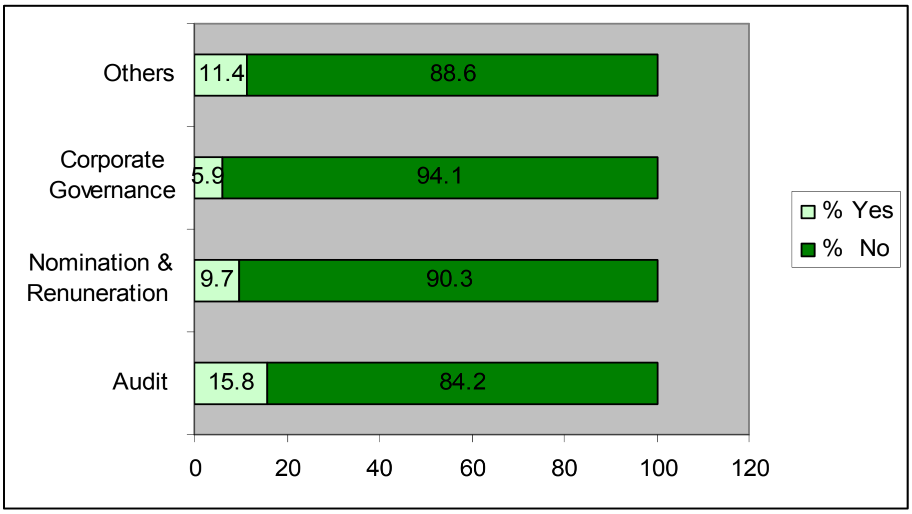
This table includes information about the composition of the board of directors grouped by class of the members.

Figure 3.2 Size of the Board of Directors



This figure shows the proportion of board of directors according to the number of members.

Figure 3.3 Board Committees



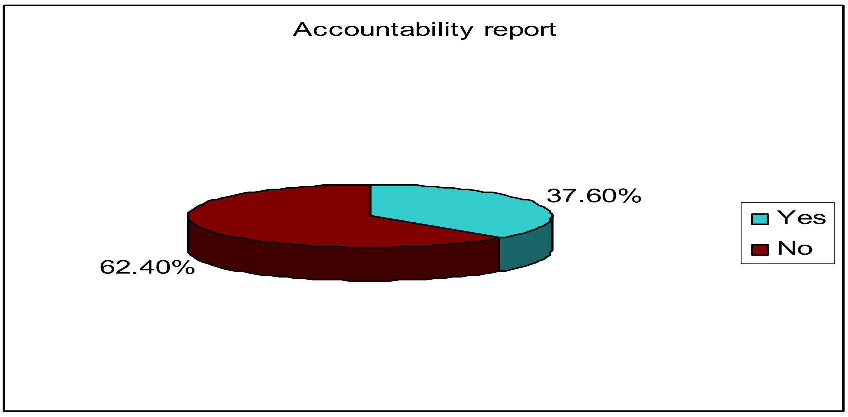
This figure shows proportion and class of board comities companies have in Colombia.

Table 3.3 Board committees by size of the company

Committees	Size of the Company (%)			
	Large	Medium	Small	Micro
Audit	21.1	14.9	15.1	11.1
Nomination & Remuneration	12.1	9.0	9.1	6.0
Corporate Governance	8.1	5.0	5.4	1.1

This table summarises the board committees companies have distributed by size of the company.

Figure 3.4 Accountability Report



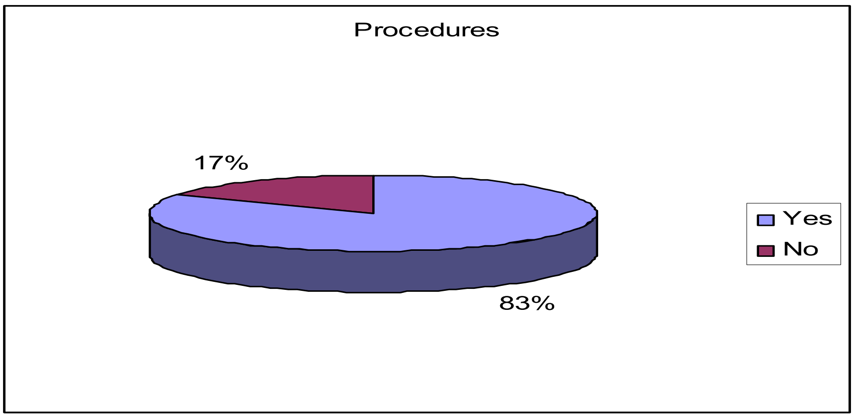
This figure shows the proportion of board members who said they hand an accountability report at least within the following month they finish their appointment.

Table 3.4 Disclosure of non- financial information

Characteristics of the Management Report	%
The management reports have been discussed at ordinary meetings	88.2
Reports disclose dealings between the company and its shareholders	75.7
The remuneration policies are included in the reports	49.5
The company have documented procedures to answer requests, suggestions and comments from shareholders	32.4
There are mechanisms for disclosing the rights and obligations of shareholders	51.5
There are mechanisms for disclosing information that may affect the value of the company (shares) capital	63.7
The board of directors approves the remuneration of the *Revisor Fiscal*	61.1
The company have a Webpage	38.3

This table summarises the answers to questions about established mechanisms for the disclosure of non-financial information

Figure 3.5 Procedures for dealing with conflict of interest



This figure shows the answer to the question to: Whether companies have procedures for dealing with conflicts of interest.

Appendix 4.1

Summary of evidence taken from Ecuadorian survey: Enhancing Corporate Governance Practices in Ecuador – BVQ and IMF (FOMIN) by Maria Soledad Salvador (2007)

Table 4.1 Interviewees

Professional Activities	Quito	Guayaquil	Cuenca	Total	%
Executive Director	11	2	0	13	25.0
Director	2	0	0	2	3.8
Vice-president	5	0	0	5	9.6
CEO	14	1	3	18	34.6
CFO	1	3	4	8	15.4
Other	6	0	0	6	11.5
Total	39	6	7	52	100
%	75.0%	11.5%	13.5%	100%	

This table shows the distribution of the interviewees included in the study by city

Table 4.2 Classification of companies by sector

Sector	Quito	Guayaquil	Cuenca	Total	%
Industry	24	7	7	38	73.1
Media	5	0	0	5	9.6
Financial intermediaries	5	0	0	5	9.6
Banks	4	0	0	4	7.7
Total	38	7	7	52	100
%	73.1%	13.5%	13.5%	100%	

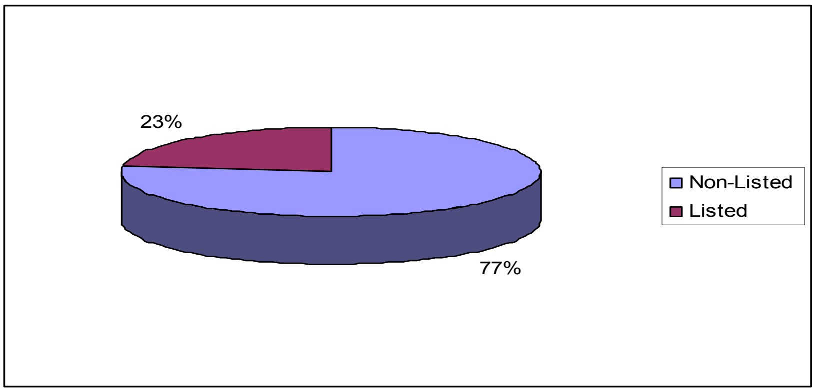
This table shows the classification of the companies by economic sector

Table 4.3 Additional information

Facts	%
Corporate governance may be beneficial for a company	83
It is important for a company to adopt good practices	67
Deal with corporate governance issues through the board of directors	69
High level managers manifest their interest in receiving training in corporate governance issues	96
Disclose timely information to their shareholders	85
Have board committees especially an audit committee	75

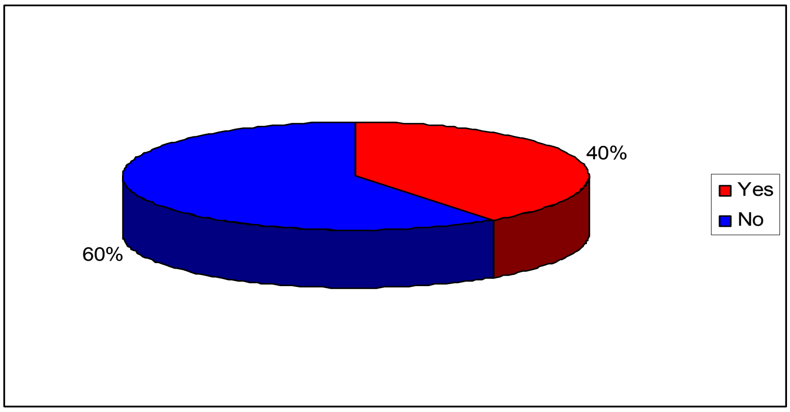
This table includes additional information taken from the survey

Figure 4.1 Type of Company



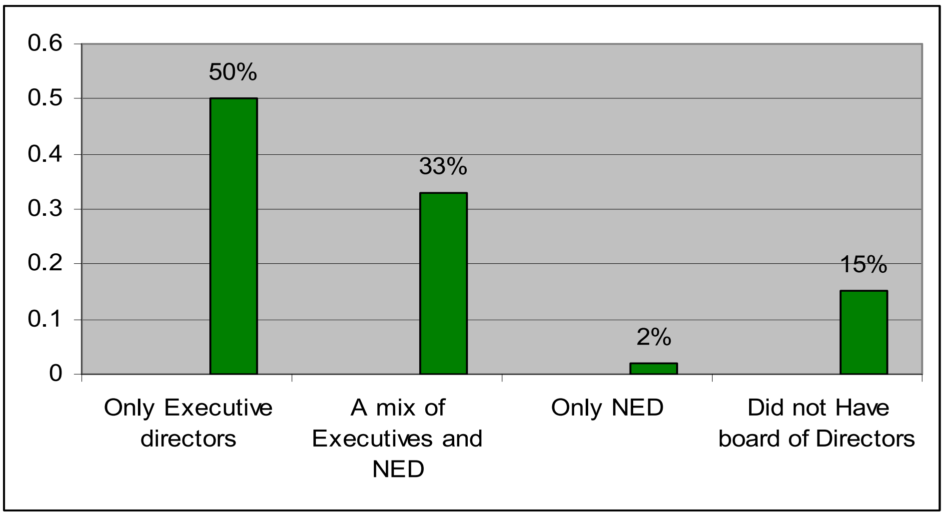
This graph shows the proportion of listed and non-listed companies included in the survey

Figure 4.2 Corporate governance and the economy



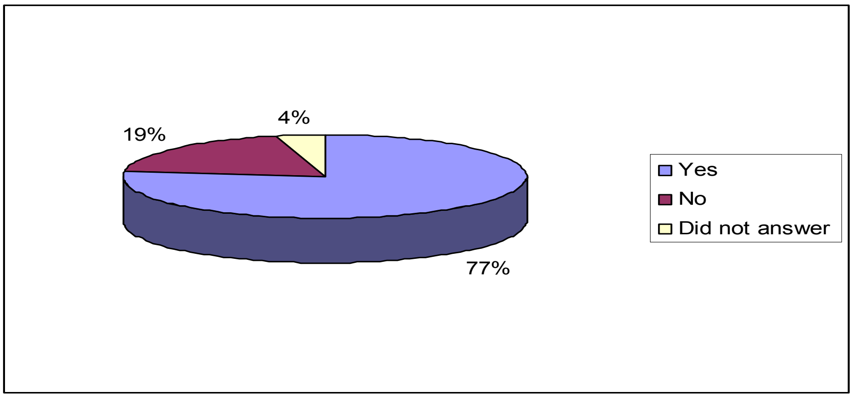
This graph shows the interviewees opinion about the effect of corporate governance on the economy

Figure 4.3 Structure of the Board of Directors



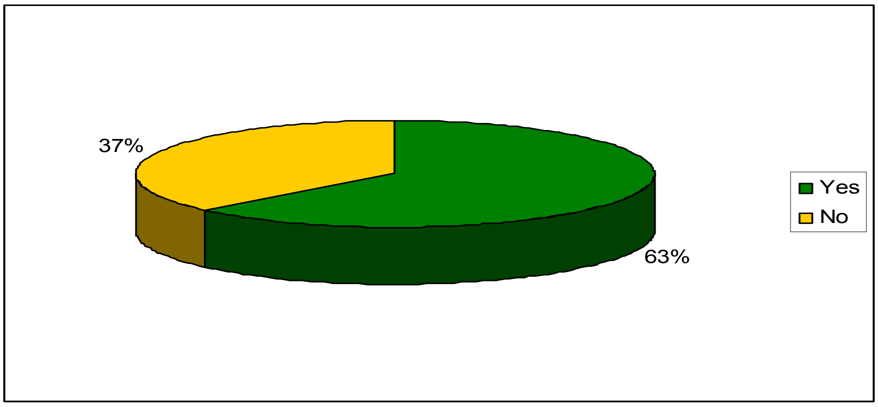
This graph shows the composition of the board of directors among the respondent companies

Figure 4.4 Awareness of Corporate Governance Principles



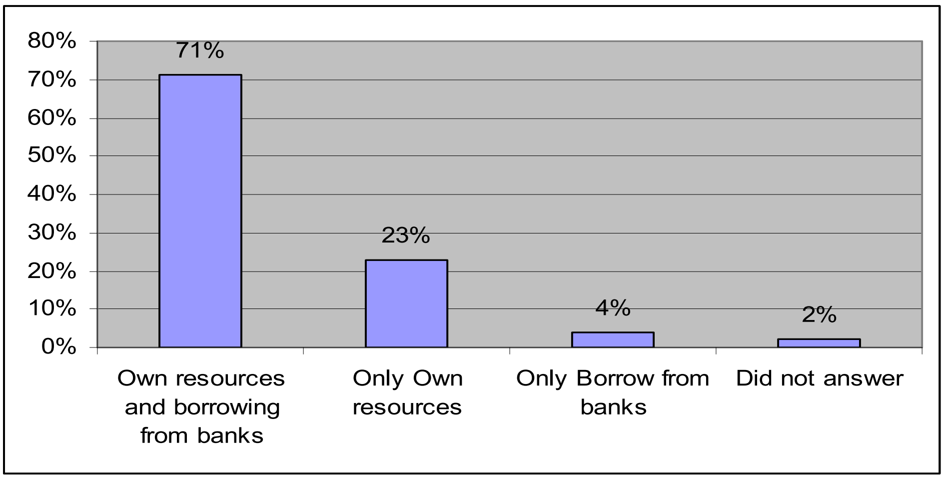
This graph shows the awareness of corporate governance among the respondents

Figure 4.5 Corporate governance should be voluntary



This graph shows the view among the interviewees on whether the adoption of corporate governance principles should be voluntary or no

Figure 4.6 Company sources of finance



This graph show the preferred sources of finance for companies

Appendix 5.1

CORPORATE GOVERNANCE DEVELOPMENTS IN THE LATIN AMERICAN ANDEAN REGION
SEMI-STRUCTURED INTERVIEWS
(Master)

A. Personal details

Name ____

Gender M □ F □

Organisation ____

Qualifications ____

B. Corporate Governance Definition

1. How do you define corporate governance?

2. What do you think makes for good corporate governance? And what practices/arrangements and structures should there be?

3. Do you think a system of CG should be strengthened through more legislation beyond the voluntary CG codes? Which are more relevant to regulators requirements?

4. Do you think that CG principles should be about all stakeholders not just shareholders?

5. How do you rate the /regulators/government/companies' attitude with respect to CG?

6. Where do you set the priorities for CG? And in which areas do you think that there is room for improvement?

7. In which areas would you like to see stricter CG principles?

8. Do you believe that a company benefits from the implementation of CG principles? And if so how?

9. Are you aware of your country's CG code or CAF's code? And what is it?

10. Are you aware of what CAF is doing about improving CG?

11. Are you aware of any difficulties in following CAF's CG guidelines? And if so what are they?
12. What do you think are the reasons for companies implementing CAF's CG guidelines?

13. Apart from CAF who else is influencing the development of CG principles in your country?

14. Why might companies want to implement CG guidelines?
    - Pressure from stakeholders
    - Accountability
    - Legitimacy

15. How have CG developments affected organisations such as?
    - BBV?
    - Confecámaras?
    - BVQ?
    - Procapitales?
    - AVE?

16. How do think the process of nationalisation of public traded companies has affected CG practices in the region?

17. Does a privatisation process need to take into account CG?

18. Do you think that the political trend in the region has affected the development of CG in your country and in the region?

19. How does the legal framework and enforcement tradition in Andean countries affect the effectiveness of good CG practices?

20. Should factors such as fraud and corruption be taken in account when developing CG standards?

21. Have you received training on CG related issues? If so who provided that training?

22. Do you feel that the training received has influence the way you approach CG issues?

C. Particular CG Issues

Board of Directors

23. What is the best form of ownership structure for companies?

24. Do you think that ownership concentration could be an obstacle for the implementation of CG principles? And if so how?

25. Should companies have a board of directors? If so, what is there a recommended size and who should be members?
26. Should there be particular requirements on the number of independent directors on boards or their committees?

27. What should be the ratio of independent to executive directors on a board?

28. Should there be a separate CEO and chairman?

29. Is it important for a board to have an independent director as chairman?

30. How long should directors serve on the board?

31. What remuneration policies should companies have? (i.e. bonus, incentives, share options etc.)

32. Should laws, regulations, guidance or self-regulation be established to address conflicts of interest that are applicable to members of the Board of Directors?

Board committees

33. What board committees are necessary to ensure a sound and effective system of CG?

34. How should the member of these committees be nominated?

Internal control and Risk management

35. How have internal control and risk management systems and practices of companies evolved in recent years?

36. To what extent have these changes been in response to regulatory developments and CAF guidelines?

37. Are specific internal controls and risk management needed in a company? If so, which ones?

38. Do companies' ownership structures affect their systems of internal control and risk management?

39. What should the audit committee involvement be in internal controls?

40. Who should be on the audit committee?

D. The organisation and its Stakeholders?

41. Who are the stakeholders of an organisation and what involvement should stakeholders have in a company?

42. Should organisations treat all their stakeholders equally?

43. How do organisations decide which responsibilities to stakeholders it will attend to and which of them should ignore?

44. Should companies explain/disclose how their governance structure takes into account the interests of their stakeholders?

45. Should there be communication with stakeholders and, if so, what and from whom are they likely to come?

E. Accountability and legitimacy of Companies

46. To whom are a company's management accountable?

47. To whom are organisations accountable?

48. Are organisations accountable to the government?
    (i) Through commercial law?
    (ii) Through company statutes?
    (iii) Through CG principles?

49. What are the reasons that make an organisation accountable to stakeholders?

50. Do you think that this accountability relationship has changed due to the adoption of CG guidelines? If yes what has been the change?

51. What accountability mechanisms do companies have?

52. How is this accountability discharged?
    (i) Annual Reports?
    (ii) Press Reports?
    (iii) Other?

53. How may the Board hold senior management accountable?

54. Does good CG help to legitimate an organisation's operations?

55. Do you have concrete examples of cases in which your organisation's involvement in community or environmental projects has been good for the company as a business?

56. Do you think, if an organisation loses or is seen to have lost its legitimacy organisational survival is threatened?

57. Would you like a copy of the results of this study?

SEMI-STRUCTURED INTERVIEWS

G1 (*Managers/Executive directors/CEO*)

1. Are you a director in another company? Is this as an independent director?

2. Do you or one of your relatives own shares in the company?

3. Are your duties and authority defined?

4. Are you a member of the board and are you on any board committees? If so which ones?

5. What are your responsibilities on the board/committees?

6. What remuneration structure for directors do you have in place?

7. How are directors' actions monitored?

8. To what extent are managers free from the influence of major shareholders?

9. How does CAF deal with the implementation of CG in the Andean region?

G2 *(Regulators)*

1. Are any of CAF's guidelines incompatible with current laws and regulation in your country? If so, how is it dealt with?

2. Do you enforce/regulate the CAF's CG code? If so how?

3. How does CAF deal with the implementation of CG in the Andean region?

4. How does your organisation implement the guidelines?

5. Do you need to negotiate the issue of CG principles with the political establishment in your country?

6. Do you think that there are special CG principles which have are specific to companies in the Andean Region?

7. What form of ownership structure offers more challenges for the implementation of CG principles?

G3 *(Independent directors)*

1. How many boards are you on as an independent or executive director?

2. How did you get appointed?

3. Are you on any board committees? If so which ones?

4. What are your responsibilities on the board/committees?

5. Do independent directors meet separately as a group?

6. How much time should an independent director spend on Board matters?

7. Do you find that you make an effective contribution in board discussions? If no, how can more effective discussions are encouraged?

8. How does CAF deal with the implementation of CG in the Andean region?

G4 ***(Others: Auditors/Firms of accountants)***

1. Are auditors in your country/jurisdiction required/expected to play a role in CG?

2. What matters do you discuss with your clients regarding CG?

3. What is the degree of your participation in the design, implementation and reporting on your clients internal control systems?

4. What is your involvement with your clients' audit committee?

5. What do you do if a client does not have an audit committee?

6. To what extent are auditors accountable to stakeholders?

7. Should external auditors inform, shareholders, the Board of Directors or regulators about any involvement of board members or senior management in illegal activities, fraud or insider abuse? If so, please explain briefly

8. To what extent do auditors' legitimate their clients' operations?

9. How does CAF deal with the implementation of CG in the Andean region?

10. Do you consider company/management attitudes to stakeholders when making investment decisions?

11. Do you assess a company's accountability practices before you invest in it?

12. What on CG information do you consider important to make an informed decision?

CASE STUDY: SEMI-STRUCTURED INTERVIEW QUESTIONNAIRE
G5 (*CAF's Staff)*

1. CAF development of its guidelines & IAAG help

2. CAF stakeholder's involvement in the development of the CG Guidelines

3. CAF implementation of its guidelines

4. CAF implementation of CG in the Andean region

5. CAF's plans for the future

G6 (*CAF's counterparts)*

1. What involvement did CAF stakeholders have in the development of the CG Guidelines?

2. Are any CAF's guidelines incompatible with current laws and regulation in your country? If so, how is it dealt with?

3. Do you enforce/regulate the CAF's CG code? If so how?

4. How does CAF deal with the implementation of CG in the Andean region?

5. How does your organisation implement the guidelines?

6. Do you need to negotiate the issue of CG principles with the political establishment in your country?

7. Do you think that there are special CG principles which have are specific to companies in the Andean Region?

8. What form of ownership structure is best for the implementation of CG principles?

G7 (*CAF*'s *Pilot study companies*)

1. How did you get involved with CAF?

2. How was this process managed, and by whom?

3. What involvement did CAF stakeholders have in the development of the CG Guidelines?

4. How does CAF deal with the implementation of CG in the Andean region?

5. How difficult was it to implement the CAF Corporate Governance Guidelines?

6. Which were the most difficult parts to implement?

Appendix 5.2

AVANCES DEL GOBIERNO CORPORATIVO EN LA REGIÓN ANDINA DE LATÍN AMERICA
ENTREVISTA SEMI – ESTRUCTURADA
(Básico)

A. Datos Personales

Nombre

Genero M □ F □

Posición

Grado Académico

B. Definición de Gobierno Corporativo

1. ¿Como define usted Gobierno Corporativo?
2. ¿Cómo se conforma el buen Gobierno Corporativo? ¿Que practicas, estructuras, lo deben integrar?
3. ¿Cree usted que el sistema del Gobierno Corporativo debe ser reforzado con legislación más allá del código voluntario del Gobierno Corporativo? ¿Cuáles serian los reglamentos más relevantes que se requieren?
4. ¿Cree usted que los principios de gobierno corporativo deben incluir también a los (interesados) beneficiarios y no solamente a los accionistas?
5. ¿Cómo valora usted la actitud de los reguladores/gobierno/compañías con respecto al gobierno corporativo?
6. ¿Qué cree usted debe ser lo prioritario en el gobierno corporativo y en que áreas cree que se puede mejorar?
7. ¿en que áreas le gustaría contar con principios más estrictos?
8. ¿Cree usted que una compañía se beneficia con la implementación del código de gobierno corporativo y como se beneficia?
9. ¿Qué conocimientos tiene del código de gobierno corporativo de Bolivia/Colombia/Ecuador/Perú/Venezuela?
10. ¿En pocas palabra, que es lo que esta haciendo la CAF para mejorar las practicas de gobierno corporativo en su área?
11. ¿Esta enterado de si alguna compañía ha experimentado dificultades en la aplicación del código de gobierno corporativo? ¿Cuales son esas dificultades, si existieron?

12. ¿Cuales cree usted que son las razones para que una compañía decida implementar el código de gobierno corporativo Andino?
13. ¿Además de la CAF quien esta promoviendo la implementación de los principios del gobierno corporativo en la región?
14. ¿Por qué las compañías desean implementar los principios del gobierno corporativo?
    - Presión de sus stakeholders
    - Para rendir cuentas
    - Para legitimar sus actividades
15. ¿En que forma los avances en materia de gobierno corporativo han afectado organizaciones como:
    - BBV?
    - Confecámaras?
    - BBQ?
    - PROCAPITALES?
    - AVE?
16. ¿Cómo cree usted que el proceso de nacionalización de compañías ha afectado las prácticas del gobierno corporativo en la región Andina?
17. ¿Cómo se reflejan en el gobierno corporativo los procesos de privatización (e.g. Colombia y Perú)?
18. ¿Cree usted que las tendencias políticas en la región han afectado el desarrollo del gobierno corporativo (en un país en particular o en la región)?
19. ¿En que forma el marco legal y la ejecución de la justicia afectan la efectividad de las buenas practicas del gobierno corporativo?
20. ¿Cree usted que la ejecución de la ejecución/implementación de los estándares del gobierno corporativo deben considerar factores tales como fraude, corrupción, etc.?
21. ¿Ha recibido usted entrenamiento en temas relacionados con el gobierno corporativo? ¿Si lo ha recibido quien fue el encargado de impartir ese entrenamiento?
22. ¿Cree que el entrenamiento recibido ha influenciado la forma como usted maneja el tema del gobierno corporativo?

C. Asuntos Particulares del gobierno corporativo: Juntas Directivas

23. ¿Cuál es la mejor forma de capitalización de una empresa?
24. ¿Cree usted que la concentración de la propiedad en una empresa puede afectar la implementación de los principios del gobierno corporativo? ¿Cómo?

25. ¿Deben las compañías tener una junta directiva/directorio: en caso de tenerlo cual es la forma y tamaño recomendado?
26. ¿Qué recomendaciones particulares en lo que se refiere al numero de directores independientes en una junta directiva?
27. ¿Cuál es el porcentaje recomendado de directores independientes en relación con ejecutivos en una junta directiva?
28. ¿Debe estar separad la función de gerente general y la de presidente de junta directiva? (¿si porque?)
29. ¿Qué tan importante es para una junta directiva el tener un miembro independiente como presidente?
30. ¿Cuál es el periodo/# de años recomendados para que un director sirva en una junta directiva/directorio?
31. ¿Cuales son las políticas de remuneración para directores recomendadas?
32. ¿Deben las reglas, leyes, lineamientos, auto-regulación, estar enfocadas a la resolución de conflictos de interés entre los miembros de la junta directiva?

Junta directiva/directorio: comités

33. ¿Qué comités son necesarios para asegurar un efectivo y estructurado sistema de gobierno corporativo?
34. ¿Cómo se deben nominar los miembros de esos comités?

Control Interno y administración de riesgos

35. ¿En que forma han avanzado los sistemas de control interno, y administración de riesgos?
36. ¿En que medida esos cambios son una respuesta a los avances en las regulaciones y los lineamientos de la CAF?
37. ¿Cuáles serian los sistemas de control interno y políticos para el manejo del riesgo necesarios en una compañía?
38. ¿Cree usted que la estructura de capital de una compañía afecta el diseño de los controles internos y el manejo de riesgos.
39. ¿Cuál deben ser la participación del comité de auditoria en el control interno de una compañía?
40. ¿Quién debe ser miembro del comité de auditoria?

D. Las partes interesadas (stakeholders) de la compañía

41. ¿Quiénes son los stakeholders de una organización y que participación tienen ellos en las operaciones de la compañía?
42. ¿Deben lar organizaciones tratar igual a todos sus stakeholders?
43. ¿Debe una organización informar cuales son las obligaciones con sus stakeholders intenta atender y cuales ignora?
44. ¿Deben las compañías publicar como sus estructuras toman en consideración los intereses de sus stakeholders?
45. ¿deben las compañías mantener constante comunicación con sus stakeholders? ¿Cuáles son los stakeholders que normalmente están en contacto?

E. La rendición de cuentas y la legitimidad de las operaciones de las compañías

46. ¿A quien deben rendir cuentas los administradores de una compañía?
47. ¿A quien deben rendir cuentas las compañías?
48. ¿Deben las compañías rendir cuentas al gobierno? ¿Cómo?
    - Por intermedio del código de comercio;
    - Por intermedio de los estatutos;
    - Por intermedio de los principios del gobierno corporativo.
49. ¿Cuáles son las razones que hacen que una organización deba rendir cuentas a sus stakeholders?
50. ¿Cree usted que la necesidad de rendir cuentas a cambiado debido a la implementación del código de gobierno corporativo? ¿Cuál ha sido el cambio?
51. ¿Qué mecanismos de rendición de cuentas tienen las compañías?
52. ¿Cómo se realiza esta rendición de cuentas?
    - Estados financieros anuales
    - Reportes de prensa
    - Otros
53. ¿Cómo rinden cuentas los altos directivos a la junta directiva?
54. ¿Cree usted que la implementación/seguimiento del código de gobierno corporativo ayuda a una compañía a generar/incrementar su legitimidad?
55. ¿Sabe usted de casos en los que la participación de una organización en proyectos a favor de la comunidad o el medio ambiente han sido beneficiosos para dicha organización?

56. ¿Cree que cuando una organización pierde o parece que ha perdido su legitimidad su continuación como una empresa viable es amenazada?
57. ¿le gustaría recibir una copia de los resultados de este estudio?

CUESTIONARIO PARA ENTREVISTAS SEMI-ESTRUCTURADAS

G1 (*Gerentes/Directores/representantes legales*)

1. ¿Es usted director en otra compañía? ¿Director independiente?
2. ¿Alguno de sus familiares o usted tiene acciones en la compañía?
3. ¿Están sus obligaciones y autoridad definas?
4. ¿Es usted miembro de algún comité o de alguna Junta directiva?
5. ¿Cuáles son sus responsabilidades como miembro de junta o de comité?
6. ¿Tienen ustedes una estructura de remuneración para los miembros de la Junta?
7. ¿Cómo son supervisadas las funciones de los directores?
8. ¿En que forma los gerentes/directores están libres de la influencia de los accionistas?
9. ¿Sabe usted algo de la implementación de los Linimientos para un Código Andino de Gobierno Corporativo (LCAGC) de la CAF en la región Andina?

G2 (*Reguladores*)

1. ¿Cree usted que alguno(s) de los LCAGC son incompatibles con las regulaciones en su? ¿Como manejan ustedes estas diferencias si las hay?
2. ¿Regulan ustedes los LCAGC? ¿Como?
3. ¿Sabe usted como se implementan los LCAGC en la región Andina?
4. ¿Cómo implementa su organización los LCAGC?
5. ¿Deben ustedes negociar la emisión de los principios del gobierno corporativo con los políticos en su país?
6. ¿Cree usted que hay principios que son especiales para las compañías que operan en la región Andina?
7. ¿Qué forma de estructura de capital es la que ofrece más reos a la implementación de los principios del gobierno corporativo?

G3 (*Directores independientes*)

1. ¿A cuantas Juntas directivas pertenece usted, como independiente o como director ejecutivo?

2. ¿Cómo fue su nombramiento?
3. ¿Es usted miembro de algún comité?
4. ¿Cuáles son sus responsabilidades como miembro de la junta directiva o comité?
5. ¿Los directores independientes se reúnen como tales en grupos separados de los directores internos/ejecutivos?
6. ¿Cuánto tiempo emplea usted como director independiente en asuntos de la junta directiva?
7. ¿Cree usted que los directores independientes tienen la oportunidad de contribuir efectivamente en las discusiones de la junta directiva? ¿Si no es así como se pueden promover discusiones más efectivas?
8. ¿Sabe algo de la implementación de los lineamientos de la CAF en región Andina?

G4 (*Otros: Auditores/contadores, inversionistas, académicos)*

1. ¿Es esperado que los auditores en su país desempeñen un papel en el gobierno corporativo?
2. ¿Qué discute usted con sus clientes en materia del gobierno corporativo?
3. ¿Cuál es el grado de su participación en el diseño, ejecución y presentación de informes sobre sus clientes sistemas de control interno?
4. ¿Cual es su participación en el comité de auditoria de sus clientes?
5. ¿Qué hace uste si uno de sus clientes no tiene comité de auditoria?
6. ¿Qué grado de responsabilidad tienen los auditores con los stakeholders?
7. ¿Deben los auditores externos informar a los accionistas, a la junta directiva, o a los reguladores sobre la participación de un miembro de la junta en actividades ilícitas, fraude, o abuso de información privilegiada? ¿Si es así porque? Explique brevemente.
8. ¿Hasta que punto los auditores legitiman las operaciones de sus clientes?
9. ¿Cómo hace frente la CAF a la aplicación del gobierno corporativo en la región Andina?
10. ¿Tiene en cuenta la actitud de una empresa hacia los stakeholders cuando toma la decisión de invertir en esa compañía?
11. ¿Evalúa las practicas de rendición de cuentas se una empresa antes de invertir en ella?
12. ¿Qué parte de la información en materia de gobierno corporativo considera importante para tomar una decisión bien informada?

ESTUDIO DE CASOS: QUESTIONARIO PARA ENTREVISTAS SEMI-ESTRUCTURADAS

G5 (*oficiales de la CAF)*

1. ¿Cómo fueron creadas los lineamientos del gobierno corporativo, cual fue el papel de la IAAG?
2. ¿Cuál fue la participación de los stakeholders de la CAF en la creación de los lineamientos?
3. ¿Cómo la CAF implementa sus lineamientos?
4. ¿Cómo la CAF administra la implementación de los lineamientos en la Región Andina?
5. ¿Qué tiene planeado la CAF para el futuro?

G6 (*las contrapartes de la CAF)*

1. ¿Cuál fue la participación de los stakeholders de la CAF en la creación de los lineamientos?
2. ¿Alguno de los lineamientos del gobierno corporativo es incompatible con alguna de las reglas/leyes de su país?
3. ¿Están ustedes encargados de regular y hacer cumplir los CAF lineamientos? ¿Cómo?
4. ¿Cómo la CAF administra la implementación de los lineamientos en la Región Andina?
5. ¿Cómo su organización implementa los lineamientos?
6. ¿Deben ustedes negociar los principios del gobierno corporativo con representantes políticos?
7. ¿Cree usted que hay principios especiales diseñados a la medida de la situación en la región Andina?
8. ¿Cuál es la mejor forma de distribución de capital para la implementación de los principios del gobierno corporativo?

G7 (*Directores de compañías en CAF estudio piloto)*

1. ¿Cómo se involucraron ustedes con la CAF?
2. ¿Cómo fue manejado este proceso y por quien?
3. ¿Están ustedes encargados de regular y hacer cumplir los lineamientos de la CAF? ¿Cómo?
4. ¿Cómo la CAF administra la implementación de los lineamientos en la Región Andina?
5. ¿Qué tan difícil fue la implementación de los lineamientos de gobierno corporativo?
6. ¿Cuáles fueron las partes más difíciles de implementar?

Appendix 5.3

Letter of Introduction

UNIVERSITY OF DUNDEE

School of Accounting & Finance

Professor Christine Helliar
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CVH/AEA

18TH August 2008

Dear Sir/Madam

Maria Mina

Maria is my PhD student studying at The University of Dundee. Her topic is Corporate Governance in the Andean Region and she is travelling between Venezuela, Columbia, Ecuador, Peru and Bolivia to carry out interviews with companies and CAF. I would be grateful if you would allow Maria access to these countries so that she can complete her PhD.

Yours faithfully

CHelliar

Professor Christine V Helliar

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Appendix 6.1

CORPORATE GOVERNANCE DEVELOPMENTS IN THE LATIN AMERICAN ANDEAN REGION

1. Please indicate whether you are:
Entrepreneur ☐ Adviser ☐ Academic ☐ Student ☐

2. To what extent do you agree with the following, ***where a 1 is strongly agree and 5 strongly disagree***

Concepts	1	2	3	4	5
Corporate governance is defined as the system by which the activities of a company are managed and controlled.					
Corporate governance is about the relationship between the board and management					
Management is accountable to the owners/shareholders					
Management is accountable to all stakeholders					
Corporate governance helps a company improve its legitimacy					
Corporate governance makes it easier for companies to raise capital					
CAF is helping to implement good CG standards.					
Confecámaras is helping to implement good CG standards					
CAF's CG guidelines are beneficial to companies and stakeholders					

3. To what extent do you agree ***where a 1 is, strongly agree and 5 strongly disagree*** that companies should.

Questions	1	2	3	4	5
Split the CEO and Chairperson functions					
Have non-Executive directors on the board					
Have independent non-executive directors on the board					
Have board Committees					
Implement procedures for resolution of conflicts of interest					
Implement procedures to deal with related party transactions					

Any comments please email Maria Cristina Mina: mcmina@dundee.ac.uk

Appendix 6.2

DESARROLLO DEL GOBIERNO CORPORATIVO EN LA REGIÓN ANDINA

1. Por favor indique cual de los siguientes aplica a usted:

   Empresario ☐ Consultor ☐ Profesor ☐ Estudiante ☐

2. ¿En qué medida está de acuerdo con cada uno de los siguientes planteamientos?, ***donde 1* es *muy de acuerdo* y 5 *totalmente en desacuerdo***

Conceptos	**1**	**2**	**3**	**4**	**5**
El Gobierno Corporativo se define como *el sistema mediante el cual se administran y controlan las actividades de una empresa*					
El gobierno corporativo es *la forma como se manejan las relaciones entre la Junta Directiva y las gerencias en una empresa*					
El gobierno corporativo *mejora la responsabilidad de los administradores con los accionistas o dueños de la compañía*					
El gobierno corporativo *mejora los derechos y responsabilidades de los stakeholders*					
El gobierno corporativo *hace mas fácil la rendición de cuentas a todos los interesados*					
El gobierno corporativo *mejora la legitimidad de una empresa*					
El gobierno corporativo *facilita la obtención de capital*					
La CAF está promoviendo la implementación de buenas prácticas de Gobierno Corporativo					
La adopción de buenas prácticas de Gobierno Corporativo de la CAF son beneficiosas para las empresas y stakeholders					
Confecámaras está promoviendo la implementación de buenas prácticas de Gobierno Corporativo					

3. ¿En qué medida está de acuerdo con cada uno de los siguientes aspectos del Gobierno Corporativo?, **donde 1 es *muy de acuerdo* y 5 *totalmente en desacuerdo***

Aspectos	**1**	**2**	**3**	**4**	**5**
Una compañía debe tener cargos separados para Gerente general y Presidente de la Junta directiva					
La Junta directiva debe tener sólo ejecutivos					
La Junta debe tener Directores Independientes					
La Junta directiva debe conformar sus respectivos comités					
Es necesario implementar procedimientos para la resolución de conflictos					
Es necesario adoptar procedimientos para hacer frente a transacciones con partes vinculadas					

Si tiene un comentario por favor email María Cristina Mina: M.C.Mina@dundee.ac.uk

Appendix 6.3

CORPORATE GOVERNANCE DEVELOPMENTS IN THE LATIN AMERICAN ANDEAN REGION

1. Please indicate whether you are:

Entrepreneur ☐ Adviser ☐ Academic ☐ Student ☐

2. To what extent do you agree with the following, ***where a 1 is strongly agree and 5 strongly disagree***

Concepts	1	2	3	4	5
Corporate governance is defined as the system by which the activities of a company are managed and controlled.	24	21	11	12	11
Corporate governance is about the relationship between the board and management	21	19	18	13	8
Management is accountable to the owners/shareholders	38	17	13	7	4
Management is accountable to all stakeholders	34	20	12	7	4
Corporate governance helps a company improve its legitimacy	35	18	11	7	6
Corporate governance makes it easier for companies to raise capital	31	23	11	7	6
CAF is helping to implement good CG standards.	34	24	9	5	3
Confecámaras is helping to implement good CG standards	44	18	6	5	5
CAF's CG guidelines are beneficial to companies and stakeholders	36	26	7	5	2

3. To what extent do you agree ***where a 1 is, strongly agree and 5 strongly disagree*** that companies should.

Questions	1	2	3	4	5
Split the CEO and Chairperson functions	59	5	7	3	6
Have non-Executive directors on the board	7	17	24	19	13
Have independent non-executive directors on the board	30	23	10	6	6
Have board Committees	39	19	11	6	4
Implement procedures for resolution of conflicts of interest	61	7	3	2	7
Implement procedures to deal with related party transactions	54	13	3	3	7

Any comments please email Maria Cristina Mina: mcmina@dundee.ac.uk